2001

State of Utah v. Scotty A. Wright : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee, vs. SCOTTY A. WRIGHT, Defendant/Appellant.	Case No. ~~20010234-CA~~ 20010345

BRIEF OF APPELLANT

APPEAL FROM THIRD JUDICIAL COURT, SALT LAKE COUNTY, STATE OF UTAH, FROM A CONVICTION OF OPERATION OF A CLANDESTINE LAB, ENHANCED TO A FIRST DEGREE FELONY, BEFORE THE HONORABLE PAT B. BRIAN AND MICHAEL K. BURTON

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STATEMENT OF JURISDICTION

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated §§ 78-2-2(4) and 78-2a-3(2)(j).

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether Wright was denied his Sixth Amendment right to effective assistance of counsel at sentencing? Where a trial court has previously held an evidentiary hearing on a motion based on ineffective assistance of counsel, such a claim presents a mixed question of law and fact." *State v. Perry*, 899 P.2d 1232, 1239 (Utah App. 1995); *see Strickland v. Washington*, 466 U.S. 668, 698, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Nonetheless, "ineffective assistance of counsel falls on the end of the spectrum subject to de novo review of the ultimate legal question of whether the defendant has received

ineffective assistance of counsel in violation of the Sixth Amendment." *Perry*, 899 P.2d at 1239.

This issue was preserved in Wright's Notice of Appeal (R. 159).

CONTROLLING STATUTORY PROVISIONS

United States Constitution; Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

A. Nature of the Case

Scott A. Wright appeals from the sentence and commitment of the Third District Court after entering a plea of guilty to one count of operation of a clandestine lab, enhanced to a first degree felony. This Court temporarily remanded this case to the Third District Court pursuant to Rule 23B of the Utah Rules of Appellate Procedure for the purpose of findings of fact relevant to the claim that trial counsel rendered ineffective assistance at sentencing.

B. Trial Court Proceedings and Disposition

Scott A. Wright was charged by information filed in the Third District Court on July 13, 2000, with one count of operation of a clandestine lab, a second degree felony, in violation of Utah Code Annotated § 58-37d-4(1)(a) and/or (b), enhanced to a first degree felony pursuant to § 58-37d-5(d) and (f) (R. 3-4). On December 1, 2000, an amended information was filed notifying Wright that he is subject to enhancement under Utah Code Annotated § 58-37d-5(1)(d), (f), and/or (g) (R. 30-31).

On September 28, 2000, Deborah Kreeck Mendez filed an appearance of counsel in behalf of Wright (R. 18).

On January 23, 2001, Wright entered a plea of guilty to operating a clandestine laboratory, enhanced to a first degree felony for being within 500 ft of a residence (R. 142-49, 150).

On March 9, 2001, based on Wright's conviction of operation of a clandestine laboratory, the Honorable Judge Pat B. Brian sentenced Wright to an indeterminate time of not less than five years and which may be life in the Utah State Prison (R. 152).

On March 15, 2001, Wright's trial counsel, Mendez, filed a Motion to Grant Credit for Time Served, because "counsel forgot to ask the Court to recommend to the Board of Pardons to grant him credit for time served" (R. 155). Wright was granted credit for 170 days previously served (R. 157).

On April 6, 2001, Wright filed his Notice of Appeal from the sentencing order in the above case (R. 159).

On February 5, 2002, Edward R. Montgomery, in behalf of Wright, filed a Memorandum in Support of Rule 23B Motion for Remand (R. 201-08). Wright asserted that trial counsel incorrectly advised Wright of the elements of the crime charged and rendered ineffective assistance of counsel during sentencing (R. 201-08).

On May 15, 2002, the Utah Court of Appeals remanded this case to the Third District Court pursuant to Rule 23B of the Utah Rules of Appellate Procedure (R. 181); *see also State v. Wright*, 2002 UT App 180. This case was temporarily remanded for the purpose of findings of fact relevant to the claim that trial counsel rendered ineffective assistance of counsel at sentencing (R. 181). The relevant factual issues to be reviewed are:

> (1) what efforts were undertaken by trial counsel in preparation for sentencing and what additional efforts could have been undertaken; (2) what were counsel's reasons for handling sentencing as counsel did; (3) what additional information relevant to sentencing could have been discovered by counsel prior to sentencing; and (4) was the omission of the additional information prejudicial to Wright at sentencing.

(R. 181).

The Honorable Judge Michael K. Burton presided over the evidentiary hearings relevant to this Court's Order of Remand pursuant to Rule 23B, which were held on July 12, 2002 and August 23, 2002 (R. 315, 316). Closing arguments were conducted

on December 3, 2002 and Judge Burton filed his Findings on Remand (R. 304-14). The Findings on Remand are attached in the Addenda.

STATEMENT OF RELEVANT FACTS

On January 23, 2001, Wright pleaded guilty to operating a clandestine laboratory, a first degree felony in violation of Utah Code Annotated § 58-37d-4(1)(a) and (b), enhanced for being within 500 feet of a residence (R. 150). Mendez talked Wright into pleading guilty even though he maintained that he did not cook or distribute any methamphetamine (R. 175: 12-13, 19; 201-202). Mendez counseled Wright that this did not matter because the statute was very broad and that he would be convicted anyway (R. 201-201, 175: 12-13). Wright was sentenced to an indeterminate time of not less than five years and which may be life in the Utah State Prison (R. 152).

Wright timely appealed claiming, *inter alia*, that his trial counsel, Deborah Kreeck Mendez, was ineffective in representing him at sentencing (R. 159, 201-08, 290). Wright filed a motion pursuant to Rule 23B of the Utah Rules of Appellate Procedure requesting that this Court remand the case to the trial court for findings of fact on his ineffective assistance claim (R. 201-208).

By order dated May 15, 2002, this Court granted the remand (R. 181). The case was remanded to the Honorable Michael K. Burton to make factual findings on ineffective assistance of counsel and whether trial counsel's ineffectiveness prejudiced Wright at sentencing (R. 304). The trial court was to specifically find

(1) what efforts were undertaken by trial counsel in preparation for sentencing and what additional efforts could have been undertaken; (2) what were counsel's reasons for handling sentencing as counsel did; (3) what additional information relevant to sentencing could have been discovered by counsel prior to sentencing; and (4) was the omission of the additional information prejudicial to Wright at sentencing.

(R. 181).

Preliminary Hearing

The Preliminary Hearing was held on November 14, 2000, before the Honorable Ann Boyden (R. 174).

Detective Goodwin testified that on March 10, 2000, he had obtained information that the co-defendant, Josh Corbett, was dealing methamphetamine (R. 174: 7-8). Detective Goodwin contacted Corbett in a public parking lot and asked him about his dealings with methamphetamine (R. 174: 8). Corbett told Detective Goodwin that he was operating a clandestine laboratory in the residence he rented and he gave Detective Goodwin consent to go and search his residence (R. 174: 12).

Detective Goodwin obtained a search warrant to search the residence because two other individuals lived there (R. 174: 12). Detective Goodwin, along with other officers, executed the search warrant on March 10, 2000 (R. 174: 12). In the upstairs northeast bedroom, the officers found an operational clandestine laboratory, although at

the time it was not in actual operation (R. 174: 13). The officers also found an undisclosed amount of methamphetamine at the residence (R. 174: 17).

Detective Goodwin testified that Scott Wright was in the garage during the search and that Wright, along with other individuals was retained during the execution of the search warrant (R. 174: 14-15). Detective Goodwin testified that Wright indicated that he rented the northeast bedroom, one of the locations where laboratory equipment materials were located (R. 174: 17).

Detective Brown testified that he also participated in the execution of the search warrant (R. 147: 64). Detective Brown testified that while he was in the garage, he overheard Wright telling one of the children that the police officers were there because "I did something bad, I did something wrong and that's why they are here" (R. 174: 65). Detective Brown testified that he did not recall Wright specifying what he did wrong (R. 174: 65).

Detective Brown testified that after Wright was placed in custody and Mirandized, he "explained all the dangers and how dangerous it was for us to be in there and for that type of activity to be going on," to Wright (R. 174: 65). After Wright was warned of these dangers, Detective Brown testified that Wright "turned to me and he said, 'You've been very nice to me, I'd like to tell you something but I don't think I should.'" (R. 174: 65-66). Wright then told Detective Brown about various hazardous waste products that were in the house that were by-products of cooking methamphetamine (R. 174: 66).

Detective Jeff Payne testified that it was his opinion that all the precursor materials to produce methamphetamine were located at the residence and identified for the purpose of manufacturing methamphetamine (R. 174: 77, 82-83).

Detective Cramer testified that he took fingerprints of all the items located at the residence, however there was no evidence that Wright's fingerprints were found on any of the items (R. 174: 44).

At the end of the preliminary hearing, Mendez argued that Wright had no knowledge that children were in the residence (R. 174: 90).

Sentencing Hearing

The Sentencing Hearing was held on March 9, 2001, before the Honorable Pat B. Brian (R. 175). Deborah Kreeck Mendez represented Wright.

The State argued that AP&P's recommendation of a year in prison and in-patient counseling did not fit the crime (R. 175: 4-5). The State argued that officers found an operational clandestine laboratory in Wright's bedroom, so Wright must have been more involved in this case (R. 175: 6). The State argued that Wright's claim of minimal involvement was not accurate because of the operational lab found in his bedroom, the amount of precursor materials found with it, as well as "a substantial quantity of methamphetamine" found in the home (R. 175: 6-8).

The State also argued that Wright must be involved in selling drugs because a co-defendant that lived with Wright, Josh Corbett, already admitted to selling drugs and that the landlord liked to rent to cooks (R. 175: 9, 20).

The State further argued that when the officers searched the home, they found two children inside the home when the search was executed (R. 175: 6). The State asked the trial court to commit Wright to prison based on the amount of drugs found at the scene, the lab being operational, children being present in the home while the lab was operational, Wright's juvenile history, his history as a felon, and his prior drug use (R. 175: 10).

Mendez responded to the State's argument by asserting that Wright had no involvement in selling drugs (R. 175: 11-12). Mendez explained that Wright did provide a place for Josh Corbett to cook drugs, and that Wright did use the methamphetamines produced, but Wright was not involved in either cooking or selling the drugs (R. 175: 12). Mendez asserted that although the lab was found in Wright's bedroom, Wright had not been living in that room (R. 175: 13).

Mendez further attempted to explain to the trial court that Wright did not know that children were at the house and that some lady had mistakenly brought them over, but Mendez's explanation was unclear (R. 175: 13-14).

Mendez argued that Wright has consistently been employed and "when I talked to his family, talked to everyone, he was still an emotional father for his children" (R. 175: 14-15).

Mendez explained to the trial court that Wright grew up in a "hard background" (R. 175: 16). Mendez explained that when Wright was young, "his mother died. His father has been involved with methamphetamine and has had to really fight it" (R. 175

16). Mendez also explained that Wright has taken responsibility for allowing Josh Corbett to "cook" methamphetamine in his home, but that Wright did not put the lab there nor did he participate in producing any drugs (R. 175: 17).

After hearing argument from both sides, the trial court stated:

> When people start cooking [methamphetamine] they know two things. It's a poison that is in high demand and it is a poison that has a high margin of profit. It costs little or nothing to make it and the profit is absolutely mind-boggling....
>
> The problem is with what is so absolutely glaring in Plaintiff's exhibit No. 2[1] that was admitted for purposes of this sentencing..., this stuff is highly dangerous. And you can pick up a newspaper and practically on a daily basis some place, one of these things goes south and a fire starts or a contamination gets spread. And what do these kids know about it? They're there exposed to all of the stuff that goes on. They don't have the sophistication that either a detective or defendant can defend themselves from it....
>
> And I don't buy into this notion that the defendant was equivalent to those three monkeys that we read about periodically, they see nothing, they hear nothing, they speak nothing. I'm not buying it.

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[1] State's exhibit number 2 is a copy of photographs of two children found at the residence during the execution of the search warrant as well as a photograph of laboratory equipment found at the residence.

And we know for sure that for whatever reason he was getting enough of this stuff for his own personal use. I mean, there had to be some quid pro quo some place along the way....

I've read the presentence report carefully. I am convinced that the defendant was in this mess up to his ears. And I have read nor heard nothing today that causes me to think to the contrary.

He's been convicted of a first degree felony. No legal reason had been established why sentence should not be imposed. He's committed to the Utah State Penitentiary for the term prescribed by law....And it is my hope that this morning, the word goes out, if you cook in this town and you come to my court you're going to prison.

(R. 175: 22-24).

Evidentiary Hearings

On July 12, 2002, Judge Burton held the first of two evidentiary hearings concerning the ineffectiveness (R. 191, 315). At the hearing, Mendez gave testimony regarding this Court's temporary remand order (R. 315).

Mendez testified that she did not follow her normal routine in preparation for Wright's sentencing hearing (R. 315: 15-16). Mendez reviewed the presentence investigation (PSI) report the night before the sentencing hearing and then met with Wright for approximately 15 minutes before the hearing and discussed the report with him (R. 315: 16-18). Mendez also briefly talked with Wright's sister briefly before

the hearing (R. 315: 18). Mendez's only other preparation for the sentencing hearing was a few notes she made on her copy of the PSI report for her argument at the hearing as she talked with Wright (R. 315: 26-27).

Mendez testified that because this was a first degree felony conviction, normally, the presumption would be that sentencing would include prison time (R. 315: 16). Mendez testified that she normally would review the facts in the PSI report in detail, talk with family members and employers, and talk with the defendant discussing all the information and putting together an argument (R. 315: 15). With this information, she would normally have family, friends, and employers testify at the sentencing hearing or give letters to the judge in behalf of the defendant in order to "humanize" the defendant and remind the judge that the defendant does not always act this way (R. 315: 20). Mendez also stated that she would normally prepare an outline to guide her and remind her of her goal and what she hoped to accomplish during the sentencing hearing (R. 315: 26-27).

Mendez testified that she did not follow her normal routine because of her heavy caseload and because the PSI report recommended probation instead of incarceration (R. 315: 16-18). Mendez also stated that she believed probation was justified because Wright had a minimal record, he had good family support, and he had been out of custody and had done well (R. 315: 33-35).

Mendez stated that her goal at the sentencing hearing was to demonstrate that Wright was a minor player in the drug manufacturing operation with a minimal

criminal history (R. 315: 27). Mendez testified that she did not believe she properly represented Wright at the sentencing hearing, stating "this case haunts me" (R. 315: 30).

Mendez acknowledged that she should have had Wright's family members and employers provide letters of recommendation to the judge and to AP&P (R. 315: 20). Wright's sister, father, and other family members were willing to provide a letter of recommendation before the sentencing hearing, but Mendez failed to ask for them[2] (R. 315: 19-21).

Mendez also stated that she should have prepared better and presumed that prison was the most likely outcome and prepare her presentation from that perspective (R. 315: 14-15). Mendez testified that she should have reviewed the PSI report in more careful detail with Wright, comparing the facts contained in it with the facts she had previously documented in her file during the course of her preparation for trial (R. 315: 15). Mendez admitted that the PSI report did not contain an adequate representation of Wright's life history and family background because the report was "distilled" (R. 315: 40).

Mendez also acknowledged that she should have prepared an outline for argument detailing that Wright was a minor participant in the crime, that he had a

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[2] At the evidentiary hearing, Wright introduced 7 letters of recommendation to the trial court, each attached in the Addenda (R. 315: 23-26).

minimal record, and that he was a caring father and did not want any children around the house containing the methamphetamine lab (R. 315: 26-28, 46).

Mendez stated that she failed to inform the sentencing judge that Wright is a responsible person in many ways (R. 315: 30). Although the PSI report stated that Wright's mother died when Wright was a child, Mendez failed to inform the sentencing judge the details surrounding the death of Wright's mother and the fact that Wright had been sexually abused as a child (R. 316: 43-44). Mendez testified that she knew that Wright "had been really impacted by the death of his mother" and that this was still an "unresolved issue" (R. 315: 30).

Mendez also knew of Wright's abusive, alcoholic father and the difficult circumstances Wright grew up in (R. 315: 30). Mendez testified that Wright had been abused by his father, and "because he'd been abused and didn't learn any coping skills through his family and upbringing, he would hide through his drugs" (R. 315: 31). However, Mendez failed to inform the trial court of this abuse and the serious impact it had on Wright's life.

Mendez also testified that although Wright was a methamphetamine addict, whenever he was high he made sure that he was not around his family or children during his episodes, but when he was sober, he was very helpful and had a good work ethic (R. 315: 32-33, 46). Again, Mendez failed to inform the trial court concerning Wright's strong family ties and his attempts to behave responsibly around his family.

Mendez further testified that although Judge Brian stated that the evidence showed that Wright was "into it up to his ears," Mendez stated "that wasn't my opinion based on the investigation that I had done in preparation for trial" (R. 315: 44). Mendez testified that she failed to inform the sentencing judge that Wright had not been at that residence for several days prior to the search and that she failed to give the sentencing judge affidavits supporting that fact (R. 315: 45).

Mendez also testified that the sentencing judge was misinformed about young children being in the house when the officers searched it (R. 315: 42). Mendez testified that the children either arrived "right after the police got there and/or moments before; and they were not in that house and they weren't right there" (R. 315: 42). Moreover, Mendez testified that children were not living in the home nor did they come there on a regular basis (R. 315: 46). In fact, Wright had told the mother of the children not to bring them around and Mendez testified that she could have obtained affidavits supporting this, but she failed to do so (R. 315: 46).

Mendez testified that she could have taken affidavits from Wright's neighbors and father explaining that Wright was not involved to the extent that the trial court believed him to be (R. 315: 42, 45).

Mendez testified that she believed that if she had made Judge Brian aware of all the facts, the outcome would have been different (R. 315: 42).

Judge Pat B. Brian and Lisa Neilson testified at the evidentiary hearing held on August 23, 2002 (R. 316).

Lisa Neilson testified that Wright is her younger brother (R. 316: 39). Neilson testified that she informed Mendez prior to the sentencing hearing that she would provide Mendez with letters of reference or do whatever she needed to do (R. 316: 40).

Neilson testified that when her mother was killed in a car accident, Wright blamed himself (R. 316: 42). Wright was standing up in the car before their mother rolled the car several times, and he blamed himself for her death (R. 316: 42). After the accident, Neilson testified that Wright "just wasn't the same. He wouldn't talk. He didn't want to do anything. He laid on the couch with his body and his head facing towards the back of the couch away from everything." (R. 316: 42). Neilson testified that Wright never received counseling for this (R. 316: 43).

Neilson further testified that a few years later, Wright was sexually abused, but never received any counseling for this either (R. 316: 44).

Neilson also testified that their father was a drunk, and life with him was "a living hell." (R. 316: 45). Neilson testified:

> We were left alone all the time. There was no food in the house. We'd come home from school, and we'd either [sic] a scoop of brown sugar, because that's all there was to eat. And he would be gone until 11:00 o'clock at night when we'd be so scared we'd call him and ask him to please come home because we were scared; and then we were hurry and run, get in the bunk beds and pretend like we were asleep because we knew when he got home that all hell was going

to break loose; even though at that point we had determined that we would rather have him there and be mad than be by ourselves.

(R. 316: 45). Nielson further testified that this behavior occurred over years of time and "at times daily" (R. 316: 45).

Even though life with their father was extremely difficult, when Wright was of age to leave the house, he chose to stay and take care of his father (R. 316: 45-46). Neilson also testified that she never had to worry about Wright stealing from her, even though he always had access to her home (R. 316: 46). If Wright ever needed anything, he would simply ask, and "he would always insist that he do something, 'I need to mow your lawn,' or you know – 'you know, what can I help you do?'" (R. 316: 46).

Neilson also testified that she was surprised to learn that children were at the residence where the methamphetamine lab was found because she heard Wright repeatedly tell his ex-girlfriend, "Do not bring the kids around." (R. 316: 47). Nielson testified that even though those children were not his own, he "was very good to those kids," and that "he loves his [own] kids dearly" (R. 316: 47).

Judge Brian testified that he presided over Wright's sentencing hearing held on March 9, 2001 (R. 316: 5). Judge Brian testified that he believed that Mendez's performance in behalf of Wright at the sentencing hearing was "extremely effective" (R. 316: 6).

Judge Brian testified that he sentenced Wright to the maximum penalty of five years to life in this case "because he deserved it" (R. 316: 7). Judge Brain testified that he believed Wright deserved the maximum penalty because "he was an active participant cooking methamphetamine with children in the home in a neighborhood where people lived close by and he put the stuff in circulation for people to buy and ruin their lives with." (R. 316: 7).

Judge Brian further testified that although Mendez failed to inform him of additional information about Wright's background, including his tough childhood, strong family support, good work history, being a good father and his usually responsible character, this information would have made no difference in the sentence handed down on Wright (R. 316: 9-10).

Judge Brian also testified that under Utah law, there are different ways that crimes are classified (R. 316: 12). Judge Brian testified that in order to pass sentence on an individual convicted of a crime, he needs information surrounding the events of the crime, the facts and circumstances, and the background of the criminal (R. 316: 14-15). Judge Brian testified that he uses all of this information in passing sentence (R. 316: 15).

Judge Brian testified that he was unaware that Wright was three years old when he was with his mother in a car accident and watched her bleed to death and that Wright was severely affected by this traumatic event, but he never received any counseling for it (R. 316: 18). Judge Brian was also unaware that Wright was sexually

molested as a child and that his father was a drug addict and alcoholic who repeatedly physically and psychologically abused him (R. 316: 19, 20). However, Judge Brian testified that these events "would not affect [Wright's] judgment on whether or not it was illegal and unlawful to cook methamphetamine" (R. 316: 19).

Judge Brian testified that the fact that many associated with Wright trusted him implicitly, thought well of him, considered him a warmhearted, caring, giving person did not matter in this case because "I don't think everybody who knew him thought well of him if they knew that he was providing methamphetamine to anybody that had ten bucks in their pocket" (R. 316: 25-26).

Judge Brian testified that one of the reasons he gave Wright the maximum sentence was the he believed Wright was distributing methamphetamine (R. 316: 26). Judge Brian further testified that even if Wright was only cooking methamphetamine for personal consumption, it was still unlawful and this would not change the sentence (R. 316: 26-27).

Judge Brian also testified that even if Wright had repeatedly tried to keep children away from the house and that he did not want any children near the drugs, this would not make any difference "because [children] were there" (R. 316: 28).

Judge Brian admitted that he stated at the sentencing hearing that if someone cooks in his city, they were going to prison (R. 316: 28). Judge Brian retracted this statement somewhat and testified "maybe not every cook goes to prison; just those that did what your client did" (R. 316: 31, 34).

SUMMARY OF ARGUMENT

Scott Wright was denied his Sixth Amendment right to effective assistance of counsel at his sentencing hearing. Wright's trial counsel failed to present mitigating character evidence in behalf of Wright and further failed to present sufficient evidence to the trial court in order to correct the trial court's inaccurate understanding of the extent of Wright's involvement in operating the drug lab.

Wright's trial counsel had available mitigating evidence, including Wright's tragic childhood, minimal criminal history, extensive family support, favorable work history, and positive employer relations, but failed to adequately present this evidence before the trial court because of her heavy case load and reliance on a favorable PSI report. Moreover, trial counsel failed to correct the trial court's inaccurate understanding of Wright's involvement in this case. The trial court mistakenly believed that Wright was manufacturing and distributing methamphetamine. Trial counsel had available evidence to the contrary, but failed to adequately present this evidence to the trial court. Trial counsel's failure to present this mitigating evidence fell below an objective standard of reasonableness.

Further, Trial counsel's deficient performance prevented the trial court from making an informed decision under the totality of the circumstances. Had the trial court been aware of all the relevant information regarding Wright's life history and the extent of his involvement in this case, the sentencing outcome would have been different.

Finally, because of counsel's deficient performance, Wright was denied his right to due process and fundamental fairness at sentencing—a critical stage of the criminal proceedings--as the trial court lacked reliable and relevant information in exercising his discretion in the imposition of sentence. Wright asserts that the exercise of a sound discretion in the imposition of sentence requires the trial court to consider all circumstances of the crime as well as the fullest information possible concerning the defendant's life and characteristics; and that because of counsel's deficient performance in this matter, the trial court lacked the information necessary to exercise such a sound discretion.

Accordingly, Wright requests that this Court conclude that he was denied his constitutional right to effective counsel at sentencing and order that this matter be remanded to the trial court for new sentencing proceedings.

ARGUMENT

I. WRIGHT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT HIS SENTENCING HEARING

"Sentencing is a critical stage of a criminal proceeding at which a defendant is entitled to the effective assistance of counsel." *State v. Casarez*, 656 P.2d 1005, 1007 (Utah 1982).

Wright asserts that his trial counsel failed to present available character witnesses that would show his positive attributes including his life history, positive work history,

and extensive family support. Moreover, trial counsel failed to offer sufficient evidence to the trial court in order to correct the trial court's inaccurate understanding of the extent of Wright's involvement in operating the clandestine drug lab. Wright asserts that these mitigating factors would have provided the trial court with an accurate understanding of his involvement in the crime. Trial counsel's deficient performance at the sentencing hearing impermissibly prejudiced him thereby denying him his right to effective assistance of counsel. Wright asserts that if these facts had been brought to light, the sentencing outcome would have been different.

In order to establish ineffective assistance of counsel, "it is the Defendant's burden to show: (1) that his counsel rendered a deficient performance in some demonstrable manner and (2) that the outcome of the trial would probably have been different but for counsel's error." *State v. Hunt*, 781 P.2d 473, 477 (Utah App. 1989); *see also Strickland v. Washington*, 466 U.S. 668, 689, 104 S.Ct. 2053, 80 L.Ed.2d 674 (1984).

"Although a defendant may show that he or she was denied effective assistance of counsel by satisfying both prongs of the *Strickland* test, the Supreme Court has emphasized that the principles set out in *Strickland* 'do not establish mechanical rules. [*Strickland*, 466 U.S.] at 696, 104 S.Ct. at 2069. Instead these principles 'are guides to the ultimate focus upon the fundamental fairness of the proceeding challenged. *Frame*, 723 P.2d at 405; *accord Strickland*, 466 U.S. at 696, 104 S.Ct. at 2069, because '[t]he purpose of the inquiry is simply to insure that defendant receives a fair trial.' *State v. Frame*, 723 P.2d 401, 405 (Utah 1986), *State v. Classon*, 935 P.2d

524, 533 (Utah App.), *cert. denied*, 945 P.2d 1118 (Utah 1997). "The Supreme Court has emphasized that the fairness of a proceeding is challenged by a claim of ineffective assistance of counsel because '[t]he right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendant's the 'ample opportunity to meet the case of the prosecution' to which they are entitled.'" *State v. Classon*, 935 P.2d at 533 (quoting *Strickland*, 466 U.S. at 685, 104 S.Ct. at 2063, and *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275, 63 S.Ct. 236, 240, 87 L.Ed. 268 (1942)).

A. Wright's counsel at the sentencing hearing failed to zealously represent his interests and this deficient performance fell below an objective standard of reasonableness.

Trial counsel's failure to present Wright's life history and to correct the trial court's inaccurate understanding of Wright's involvement in the lab fell below an objective standard of reasonableness.

To satisfy the first prong of the *Strickland* test, Wright must show that trial counsel's representations fell below an objective standard of reasonableness. *See Strickland*, 466 U.S. at 689; *State v. Tennyson*, 850 P.2d 461, 465 (Utah App. 1993). To meet this prong, Wright "must prove that specific, identified acts or omissions fall outside the wide range of professionally competent assistance." *State v. Frame*, 723 P.2d 401, 405 (Utah 1986).

"Whenever there is 'a legitimate exercise of professional judgment in the choice of trial strategy, the fact that it did not produce the expected result does not constitute ineffectiveness of counsel.'" *Parsons v. Barnes*, 871 P.2d 516, 524 (Utah 1994) (quoting *State v. Bullock*, 791 P.2d 155, 160 (Utah 1989)).

The Utah Supreme Court held that defense attorneys "must adequately investigate all potentially mitigating factors" to provide effective assistance of counsel. *State v. Taylor*, 947 P.2d 681, 686 (Utah 1997). "Failure to investigate mitigating factors can constitute ineffective assistance of counsel only where such factors actually exist and may be productively used in the penalty phase." *Id.* at 687.

In *Armstrong v. Dugger*, 833 F.2d 1430 (11th Cir. 1987), the defendant claimed his trial counsel was ineffective at the sentencing proceeding for failing to investigate and present mitigating evidence. *Id.* at 1431. The defendant was convicted on two counts of first degree murder and one count of robbery. *Id.* at 1432.

The entire sentencing proceeding, including evidence, arguments, instructions, deliberation, and sentencing lasted a little more than one hour. *Id.* During the sentencing phase, trial counsel called only one mitigating witness, the defendant's parol officer. *Id.*

After an evidentiary hearing to consider the defendant's ineffective claim, the United States District Court for the Middle District of Florida concluded that "trial counsel failed to prepare for the sentencing proceeding by conducting a meaningful investigation." *Id.* Besides speaking with the parol officer, the only other preparation

trial counsel conducted before the sentencing proceeding "was a single conversation with the [defendant], his mother and stepfather." *Id.* However, no other witness presented any testimony at the sentencing hearing besides the parol officer. *Id.*

The District Court also concluded that trial counsel was ineffective because "several mitigating aspects of [defendant's] character could have been proved by witnesses who were available at the time of trial," and several other witnesses "would have testified at the sentencing hearing proceeding had they been asked." *Id.*

The 11th Circuit in *Armstrong* agreed with the District Court's findings, and further held that trial counsel's failure to investigate and present this evidence at the sentencing proceeding was not trial strategy, but rather negligence on the part of trial counsel. *Id.* at 1433; *see also Strickland*, 466 U.S. at 690-91. The 11th Circuit found that trial counsel explicitly testified that his lack of investigation was not a strategic or tactical decision, but rather due to his lack of "inexperience coupled with the fact that it was a new procedure." *Id.*

The 11th Circuit further found that several witnesses were available that would testify concerning the defendant's history of nonviolence and religious activities, as well as his poverty and poor living conditions during his childhood. *Id.* Family members would testify about his hardworking nature and irregular school attendance due to the need to work to supplement his family's income. And an expert witness could have testified that the defendant "was mentally retarded and had organic brain damage." *Id.* The 11th Circuit held that the "demonstrated availability of undiscovered mitigating

evidence clearly met the prejudice requirement" under *Strickland* and remanded for a new sentencing hearing. *Id.* at 1434, 1436.

In *Wiggins v. Smith*, 123 S.Ct. 2527, 71 USLW 4560 (2003), Wiggins was convicted before a judge for first degree murder, robbery, and two counts of theft. *Id.* at 2532. After his conviction, Wiggins elected to be sentenced by a jury. *Id.*

At the sentencing hearing, Wiggins' trial counsel explained to the jury in her opening statement "[y]ou're going to hear that Kevin Wiggins has had a difficult life. It has not been easy for him. But he's worked. He's tried to be a productive citizen, and he's reached the age of 27 with no convictions for prior crimes of violence and no convictions, period....I think that's an important thing for you to consider." *Id.* However, during the proceedings themselves, trial counsel introduced no evidence of Wiggins' life history or family background. *Id.*

Instead of presenting mitigating evidence, trial counsel decided to pursue an alternate strategy and only presented evidence that Wiggins did not kill the victim by his own hand. *Id.* at 2532, 2535. Trial counsel could have "introduced psychological reports and expert testimony demonstrating Wiggins' limited intellectual capacities and childlike emotional state on the one hand, and the absence of aggressive patters in his behavior, his capacity for empathy, and his desire to function in the world on the other." *Id.* at 2532. Again however, counsel failed to proffer any evidence of Wiggins' life history. *Id.*

After hearing argument and receiving the court instructions on the sentencing task before it, the jury returned with a sentence of death. *Id.*

Wiggins retained new counsel and eventually sought post-conviction relief through the United States Supreme Court, claiming his attorneys' performance at sentencing violated his Sixth Amendment right to effective assistance of counsel by failing to investigate and present mitigating evidence of his dysfunctional background. *Id.* at 2532, 2534.

To support his claim, Wiggins presented testimony by a licensed social worker certified as an expert by the court. *Id.* at 2532. The social worker's testimony contained "evidence of the severe physical and sexual abuse [Wiggins] suffered at the hands of his mother and while in the care of a series of foster parents." *Id.* at 2533. The social worker chronicled Wiggins' bleak life history, including being raised by a chronic alcoholic mother who "frequently left Wiggins and his siblings home alone for days, forcing them to beg for food and to eat paint chips and garbage." *Id.*

Following the legal principles that govern claims of ineffective assistance of counsel in *Strickland*, the United State Supreme Court held that in "any ineffectiveness case, a particular decision to not investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* at 2535 (citation omitted). The Court also reiterated that "[p]revailing norms of practice as reflected in American Bar Association standards and

the like...are guides to determining what is reasonable." *Id.* (quoting *Strickland*, 466 U.S. at 688-89).

The Supreme Court observed that trial counsels' investigation drew from three sources: the PSI report, a psychological review, and records from the department of social services that tracked down Wiggins' various placements in the foster care system. *Id.* at 2536. The Court determined that this limited investigation into Wiggins' life history "fell short of the professional standards that prevailed in Maryland in 1989."[3] *Id.*

The Court also stated that trial counsels' investigation was also unreasonable in light that they knew several facts: Wiggins' "mother was a chronic alcoholic; Wiggins was shuttled from foster home to foster home and displayed some emotional difficulties while there; he had frequent, lengthy absences from school; and, on at least one occasion, his mother left him and his siblings alone for days without food." *Id.* at 2537.

The Court further stated that trial counsel "uncovered no evidence in their investigation to suggest that a mitigation case, in its own right, would have been counterproductive, or that further investigation would have been fruitless." *Id.* And although trial counsel initially told the jury it would "hear that Kevin Wiggins has had a difficult life," counsel never followed up with details of Wiggins' history. *Id.* at 2538.

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[3] Standard practice in Maryland capital cases included the preparation of a social history report. *Wiggins*, 123 S.Ct. at 2536. The Court also referred to the ABA Standards of Criminal Justice and the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (1989). *Id.* at 2537.

The Court held that trial counsels' investigation into Wiggins' background was objectively unreasonable. *Id.* at 2539. Although the Court emphasized that *Strickland* "does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing," it stated that "[a] decision not to investigate thus 'must be directly assessed for reasonableness in all the circumstances.'" *Id.* at 2541 (citing *Strickland*, 466 U.S. at 691). The Court further held that not only was trial counsels' decision to end their investigation inconsistent "with the professional standards that prevailed in 1989," but that it was unreasonable "in light of the evidence counsel uncovered in the social services records--evidence that would have led a reasonably competent attorney to investigate further." *Id.* at 2542.

Although both *Armstrong* and *Wiggins* involve capital punishment cases, the attorneys' assistance in these respective cases was found ineffective and is applicable in the present case to show that Wright's trial counsel's performance fell below an objective reasonable standard. Moreover, sentencing in every criminal proceeding is a critical stage that implicates a defendant's right to due process. *See State v. Casarez*, 656 P.2d 1005, 1007 (Utah 1982). *See also State v. Lipsky*, 608 P.2d 1241 (Utah 1980) (fundamental fairness requires that a defendant have right to inspect presentence report prior to sentencing).

The 11th Circuit in *Armstrong* held that trial counsel's failure to investigate and present mitigating evidence at the sentencing proceeding was not trial strategy, but

rather negligence. *Armstrong*, 833 F.2d at 1433. And the United States Supreme Court held in *Wiggins* that trial counsel's limited review into Wiggins' life history and failure to present mitigating evidence in which he was aware of or should have been aware of was below that of an objective reasonable standard. *See Wiggins*, 123 S.Ct. at 2539-42.

Likewise, Mendez's inadequate presentation of mitigating evidence regarding Wright's life history and her failure to correct the trial court's inaccurate perception of Wright's involvement under all the circumstances was not deliberate trial strategy. It was negligence and ineffective assistance of counsel.

The facts in the present case are eerily similar *Wiggins* and *Armstrong*. Wiggins suffered physical and sexual abuse from "a chronic alcoholic" mother who, "at least on one occasion...left him and his siblings alone for days without food." *Wiggins*, 123 S.Ct. at 2537. The United States Supreme Court observed that because Wiggins' trial counsel was aware of this abuse, and its failure to investigate further and present this evidence at the sentencing phase was objectively unreasonable. *Id.* at 2539.

And in *Armstrong*, where trial counsel failed to call several "witnesses who were available at the time of trial" that would have testified to "several mitigating aspects" of the defendant's character concerning his history of nonviolence as well as his history of poor living conditions, hardworking nature, and mental handicaps, the 11th Circuit Court of Appeals held trial counsel's performance ineffective. *Armstrong*, 833 F.2d at 1433-34.

Despite the fact that Mendez knew about Wright's difficult childhood due to his alcoholic, abusive father, Mendez never made the trial court aware of the serious, disastrous impact this had on Wright (R. 315: 30-31). And with a little more investigation, Wright's trial counsel would have also discovered that Wright was also sexually molested as a child (R. 316: 44). Mendez also knew about Wright's positive history with family and friends, but never adequately informed the trial court how these relationships might help Wright recover from his addiction and respond favorably to treatment (R. 315: 30).

And just like *Armstrong*, where trial counsel failed to call any mitigating witnesses that were available except for a parol officer, Mendez called no mitigating witnesses, even though she knew many would be willing to testify in Wright's behalf (R. 315: 19-26). Thus, Mendez's performance fell below an objective standard of reasonableness.

The United States Supreme Court and the 11th Circuit Court of Appeals has found that presenting such mitigating evidence of the life history of a defendant during the sentencing hearing is the duty of a defense attorney. *See Wiggins*, 123 S.Ct. at 2535-6; *see also Armstrong*, 833 F.2d at 1434-6.

In fact, Mendez testified at the evidentiary hearing that her representation at the sentencing hearing was not a result of good trial strategy (R. 315: 35). Mendez testified that normally, she would presume a person with a first degree felony conviction would face prison time, and that she would have family and friends testify at

the sentencing hearing or give letters to the judge to "humanize" the defendant (R. 315: 16). Judge Burton[4] agreed that Mendez should have taken additional efforts at the sentencing hearing, such as presuming "prison was the most likely outcome and prepare her presentation from that perspective" as well as offering letters of recommendation from "family, friends and employers" (R. 305-06).

Instead of presenting Wright's life history, Mendez testified that she intended to demonstrate at the sentencing hearing that Wright was a minor player in the drug manufacturing operation and had a minimal criminal record (R. 315: 27). Even here, however, Mendez failed to provide the trial court with adequate evidence to support her position. Mendez testified that she did not present mitigating evidence because of her heavy caseload and because the PSI report recommended probation instead of incarceration (R. 315: 16-18). Judge Burton found that Mendez should have followed her typical practice in preparing for sentencing, but she failed to do so in this case (R. 305-07).

At the sentencing hearing, although Mendez briefly referred to statements already contained in the PSI report, she failed to inform the trial court how these events have impacted Wright's life and how such events make him a good candidate for reform and the need to undergo a treatment program.

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[4] Judge Burton presided over the evidentiary hearings ordered by this Court pursuant to Rule 23B (R. 304).

The PSI summarily states, "In 1974, when [Wright] was three years old, his mother died in a car accident. Thereafter, he lived with his 'alcoholic father.'" (R. 173: 7). Additionally, the PSI states that Wright described his childhood as "rough" (R. 173: 7).

Mendez only briefly mentioned Wright's difficult childhood, stating Wright "doesn't come from a clean background. He had a hard time of it. His mother died. His father has been involved with methamphetamine and has had to really fight it." (R. 175: 16). All the trial court knew was that Wright's mother died when he was young. The trial court had absolutely no knowledge of how she died and what affect this had on Wright. Moreover, Judge Burton found that Mendez should have presented the "details surrounding the death of Mr. Wright's mother" (R. 310).

Mendez utterly failed to bring the trial court's attention to the fact that Wright was in the vehicle with his mother when she rolled the car several times and died as a result of the accident (R. 316: 42). In fact, Wright suffered serious emotional problems after this horrific event and blamed himself for his mother's death because he was standing in the vehicle distracting his mother (R. 315: 30; 316: 42). Mendez failed to inform the trial court that Wright was so shook up by this tragedy, that he basically did nothing but sit on the couch all by himself for a whole year and did not talk with anyone (R. 316: 42-43).

Mendez also failed to inform the trial court about Wright's difficult life with his alcoholic and drug abusing father. Judge Burton also found that Mendez should have

presented to the trial court the "details about the abuse Mr. Wright suffered at the hands of his father" (R. 311). Mendez only told the trial court that Wright's father "is a long-long-term alcoholic and the meth [sic]" (R. 175: 16). Mendez failed to explain to the trial court that growing up with his father was a "living hell" because his father was always drunk and physically and emotionally abused him (R. 316: 45-46). Wright actually lived in great fear during his childhood due to his father's addictions and was repeatedly left alone with his sister while his father was out drinking at night (R. 316: 45).

Mendez further failed to inform the trial court that Wright in fact had been sexually abused, contrary to the PSI report (R. 173: 9; 316: 51-54). Judge Burton also found that "the fact that Mr. Wright had been sexually abused as a child and how that abuse affected him" should have been disclosed to the trial court (R. 310). Compounded with these omissions was the fact that Wright never received any counseling to help him cope with these disastrous events, and Mendez never informed the trial court of the dangerous impact these events had on his life (R. 316: 44).

Moreover, Mendez failed to adequately inform the trial court of Wright's personal character and the strong support he received from family and friends which would help him reform. Mendez only informed the trial court that Wright "has a work history. He has a good work history and he has skills. And even in all of his stupidity, when I talked to his family, talked to everyone, he was still an emotional father for his children." (R. 175: 14-15). And regarding Wright's strong family support, Mendez

stated only "We got three rows of people here of family that are supportive." (R. 175: 16). Judge Burton also found that Mendez should have interviewed Wright's family and former employers "for the specific purpose of preparing for sentencing" (R. 306). Mendez simply failed to bring to the trial court's attention that Wright enjoyed great trust among his employers and family. His employers knew that they could trust Wright not to steal from them and that Wright was honest, hardworking and trustworthy. [5]

At the sentencing hearing, Mendez only argued that Wright was eligible for a drug-treatment program because "I really believe that [Wright] was a minor role" in the operation of the clandestine laboratory (R. 175: 12), and that "he has a concern for his children, about financially and emotionally supporting them." (R. 175: 16). Mendez also stated at the sentencing hearing that Wright was taking responsibility for his actions and that he has cut his ties to his old drug friends (R. 175: 17). Thus, the full argument in behalf of Wright regarding his character and ability to reform amounted to only a few short sentences.

All the trial court knew was that Wright allowed a laboratory to be operated in the residence where he lived with two other people and that small children were present in the home when the officers conducted the search (R. 175).

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[5] The exhibits entered in as evidence during the evidentiary hearing attest to this. These exhibits are contained hereafter in the addenda.

Further, the trial court was under a false presumption that Wright was involved not only in cooking methamphetamine, but that he was also engaged in selling the drug to others (R. 316: 25-26). Mendez failed to adequately inform the trial court that Wright was not cooking or selling the drug. Mendez only argued at the sentencing hearing that Wright had a "lack of knowledge as to the cooking process," but failed to provide any affidavits or testimony to support this (R. 175: 19). Judge Burton found that Mendez should at least have prepared and offered to the trial court a "sentencing memorandum concerning... [Wright's] role in the offense, and a comprehensive and detailed analysis concerning why AP&P's recommendation was appropriate" (R. 306-07). Additionally, the trial court believed that Wright knew that children were at the residence where methamphetamine was manufactured (R. 175: 22; 316: 7). Mendez again failed to provide the trial court with contrary evidence.

These last two failures to correct the trial court's inaccurate understanding of the extent of Wright's involvement with the lab prejudiced Wright substantially because the trial court based its sentencing primarily on the facts that Wright was heavily involved in cooking and selling methamphetamine, especially with children in the home (R. 316: 7).

Mendez's failure to provide mitigating evidence showing Wright's traumatic life history and her failure to correct the trial court's inaccurate understanding of Wright's involvement in the offense clearly fell below an objective standard of reasonableness.

B. Had the trial court been aware of all the relevant information, Wright's sentencing outcome would have been different and without such pertinent information the trial court could not exercise sound discretion in the imposition of the sentence.

The second prong of the *Strickland* test is satisfied by showing there is a reasonable probability that "but for counsel's errors, the result of the proceeding would have been different." *Frame*, 723 P.2d at 405. A reasonable probability has been described as that "sufficient to undermine the confidence in the outcome." *Id.*

In *Wiggins*, after finding that trial counsels' performance was ineffective at sentencing, the United States Supreme Court considered the second prong under *Strickland*. The Court found that "Wiggins experienced severe privation and abuse in the first six years of his life while in the custody of his alcoholic, absentee mother. He suffered physical torment, sexual molestation, and repeated rape during his subsequent years in foster care. The time Wiggins spent homeless, along with his diminished mental capacities, further augment his mitigation case." *Wiggins*, 123 S.Ct. at 2542.

The Court further found that Wiggins' "thus has the kind of troubled history we have declared relevant to assessing a defendant's moral culpability." *Id.*; see also *Penry v. Lynaugh*, 492 U.S. 302, 319, 109 S.Ct. 2934, 106 L.Ed. 256 (1989) ("[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background...may be less culpable than defendants who have no such excuse"). After reviewing Wiggins' the life history, the Court declared:

> Given both the nature and extent of the abuse petitioner suffered, we find there to be a reasonable probability that a competent attorney, aware of this history, would have introduced it at sentencing in an admissible form....Moreover, given the strength of the available evidence, a reasonable attorney may well have chosen to prioritize the mitigation case over the direct responsibility challenge, particularly given that Wiggins' history contained little of the double edge we have found to justify limited investigations in other cases.

Id. at 2542.

Although the jury heard one significant mitigating factor--that Wiggins had no prior convictions, the Court in *Wiggins* ultimately found that "had the jury been confronted with this considerable mitigating evidence, there is a reasonable probability that it would have returned with a different sentence." *Id.* at 2543.

In the present case, trial counsel's failure to present mitigating evidence created a one-sided, non-adversarial sentencing hearing. This deficient performance prevented the trial court from making an informed decision under the totality of the circumstances, thus causing a "breakdown in the adversarial process that our system counts on to produce just results." *Strickland*, 466 U.S. at 696.

The trial court heard little evidence regarding Wright's history, other than that his mother died when he was three and that his father was an alcoholic (R. 173: 7; 175: 16). As stated above, Mendez failed to present adequate mitigating evidence available to her at the sentencing hearing other than the evidence already distilled in the PSI

report (R. 173: 7, 315; 316). This deficient performance reasonably led the trial court to believe that Wright lived a relatively normal childhood without any mitigating factors to consider in his behalf. Moreover, Mendez presented little if any mitigating evidence that Wright enjoyed strong family ties and positive relations with former employers (R. 175: 16).

All the trial court knew was that a convicted felon stood before the court with little, if any mitigating factors in his favor. The trial court knew nothing of Wright's troubled life history and how this seriously affected his life. The trial court also knew nothing of Wright's positive family and work relationships and how these would aid in his recovery through a treatment program.

Mendez's deficient performance further led the trial court to believe that Wright was actively engaged in distributing methamphetamines in his neighborhood and that he cooked methamphetamines while children were in the home (R. 175: 21-24). As shown above, Mendez had evidence available that showed that Wright's only involvement was that he was aware that Josh Corbett was manufacturing methamphetamine in the house and that Wright was personally using the manufactured drug (R. 315: 27). Moreover, Wright always maintained that this was the full extent of his involvement (R. 173: 3, 12).

Wright asserts that if Mendez presented all the evidence of his life history and the full extent of his participation in the crime, the sentencing outcome would have been different. In addition, Wright asserts that the ultimate focus of this Court in

regards to this issue should be on fundamental fairness of the sentencing proceeding. *See Classon*, 935 P.2d at 533; *see also Strickland*, 466 U.S. at 696, 104 S.Ct. at 2096.

Moreover, due process "require[s] that a sentencing judge act on reasonably reliable and relevant information in exercising discretion in fixing a sentence." *State v. Howell*, 707 P.2d 115, 118 (Utah 1985). *Accord Gardner v. Florida*, 430 U.S. 349, 358, 97 S.Ct. 1197, 1204-05, 51 L.Ed.2d 393 (1977). "To insure fairness in sentencing procedure U.C.A. § 77-35-22(a)[6] directs trial court's to hear evidence from both the defendant and the prosecution that is relevant to the sentence to be imposed." *Howell*, 707 P.2d at 118. Rule 22(a) of the Utah Rules of Criminal Procedure reads in part: Before imposing sentence the court shall afford the defendant an opportunity to make a statement and to present any information in mitigation of punishment.... The prosecuting attorney shall also be given an opportunity to present any information material to the imposition of sentence."

However, at the evidentiary hearing, Judge Brian testified that the fact that Mendez failed to present these mitigating factors would not have changed the outcome of the sentence (R. 316: 9-10). Even though Judge Brian admitted that he was unaware of Wright's traumatic background, he testified that these events "would not affect [Wright's] judgment on whether or not it was illegal and unlawful to cook methamphetamine." (R. 316: 19).

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[6] Utah Code Annotated Section 77-35-et al. has been repealed and replaced by the Utah Rules of Criminal Procedure. Rule 22 has now replaced § 77-35-22.

Judge Brian also testified that even if he were mistaken and that Wright's only involvement in the drug lab was knowledge that drugs were being manufactured in the home and that Wright was only personally consuming the drugs, this was still unlawful and this evidence would still not change the sentence (R. 316: 26-27). Judge Brian further testified that even if Wright did all he could to keep children out of the home, this would not make any difference "because [children] were there" (R. 316: 28). And although Judge Burton's Findings on Remand found that Wright was not prejudiced by the omitted information, Judge Burton only summarized what Judge Brian testified to at the evidentiary hearing and Judge Burton made no separate factual findings himself regarding prejudice (R. 311-12).

Under such a standard, there would be little point in having a sentencing hearing if mitigating evidence regarding a defendant's conduct had no effect on the sentence outcome. Apparently, from the testimony at the evidentiary hearing, despite Wright's life history, his minimal criminal background, and his limited involvement in this crime, no matter what, "if you cook in this town and you come to my court you're going to prison" (R. 175: 24).

Wright asserts that "[i]n discharging his duty of imposing a proper sentence, the sentencing judge is authorized, if not required, to consider all of the mitigating and aggravating circumstances involved in the crime." *Williams v. Oklahoma*, 358 U.S. 576, 585, 79 S.Ct. 421, 427, 3 L.Ed.2d 516 (1959). Likewise, a "sentencing judge must have 'the fullest information possible concerning the defendant's life and

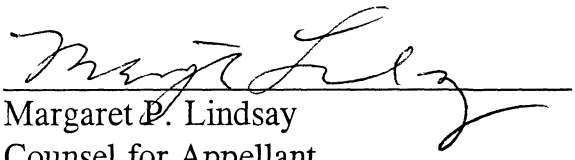
characteristics,' so that the punishment fits not only the crime, but the defendant as well." *United States v. Baylin*, 696 F.2d 1030, 1038 (9th Cir. 1971) (quoting *Williams v. New York*, 337 U.S. 241, 247, 69 S.Ct. 1079, 1083, 93 L.Ed. 1337 (1949)). Furthermore, "A trial court which fashions an inflexible practice in sentencing contradicts the judicially approved policy in favor of individualizing sentences." *United States v. Daniels*, 446 F.2d 967, 971 (6th Cir. 1971) (quoting *Williams v. New York*, 337 U.S. at 248, 69 S.Ct. 1079, 93 L.Ed. 1337 (1949)). Finally (and necessarily), "the exercise of a sound discretion in such a case required consideration of all the circumstances of the crime for 'the belief no longer prevails that every offense in a like legal category calls for an identical punishment (without regard to the past life and habits of a particular offender).'" *Williams v. Oklahoma*, 358 U.S. at 585, 79 S.Ct. at 427 (quoting *Williams v. New York*, 337 U.S. at 247, 69 S.Ct. at 1083).

Thus, Wright was denied his Sixth Amendment right to affective assistance of counsel and his right to due process and fundamental fairness at sentencing because trial counsel's performance was below an objective standard of reasonableness. Accordingly, Wright asks that this Court reverse the sentence imposed in this matter and remand the matter to the trial court for new sentencing proceedings.

CONCLUSION AND PRECISE RELIEF SOUGHT

For the foregoing reasons, Wright asks this Court to reverse the trial court's sentencing order and remand this case for a new sentencing hearing.

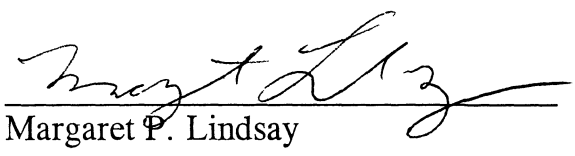
RESPECTFULLY SUBMITTED this 22nd day of August, 2003.



Margaret P. Lindsay
Counsel for Appellant

CERTIFICATE OF MAILING

I hereby certify that I delivered four (4) true and correct copies of the foregoing Brief of Appellant to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 22nd day of August, 2003.



Margaret P. Lindsay
Counsel for Appellant

ADDENDA

00-0-2-03

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE COUNTY
By Shasta Blackburn
Deputy Clerk

* * *

ORIGINAL

STATE OF UTAH, PLAINTIFF, VS. SCOTT ALAN WRIGHT, DEFENDANT.	)	CASE NO. CR-001912104 TRANSCRIPT OF: SENTENCING HEARING

BEFORE THE HONORABLE PAT B. BRIAN

SCOTT M. MATHESON COURTHOUSE
450 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84114-1860

MARCH 9, 2001

REPORTED BY: EILEEN M. AMBROSE, C.S.R.

APPEARANCES

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* * *

P R O C E E D I N G S

THE COURT: STATE OF UTAH VERSUS SCOTT ALAN WRIGHT, 001912104.

COUNSEL WILL STATE AN APPEARANCE?

MS. KREECK-MENDEZ: DEBORAH KREECK-MENDEZ FOR MR. WRIGHT. MR. WRIGHT IS PRESENT HERE WITH ME FROM CUSTODY.

MS. BEATON: BRENDA BEATON FOR THE STATE.

THE COURT: ALL RIGHT. HAVE YOU REVIEWED THE PRESENTENCE REPORT?

MS. KREECK-MENDEZ: I HAVE, YOUR HONOR. I RECEIVED IT LAST NIGHT, WENT OVER IT, I CAME OVER EARLY AND WENT OVER IT WITH SCOTT TODAY. THERE ARE A FEW CORRECTIONS THAT I WOULD LIKE TO MAKE.

THE COURT: CITE ME CHAPTER AND VERSE IF YOU WILL. WE WILL MAKE THE CORRECTIONS.

MS. KREECK-MENDEZ: LET'S START ON PAGE 5, JUVENILE RECORD.

THE COURT: ALL RIGHT.

MS. KREECK-MENDEZ: 2/18 OF '87.

THE COURT: YES.

MS. KREECK-MENDEZ: IT SAYS POSSESSION OF MARIJUANA/USE, AND THEN IT SAYS 100 POUNDS. WELL, YOUR HONOR, THAT'S A BALE. AND I'VE TALKED TO SCOTT, I'VE TALKED TO HIS DAD. HE WAS AT SCHOOL AND HE HAD AN EIGHTH. I WILL BE GETTING THAT FORMALLY CHANGED, BUT I KNOW WHAT HAPPENS TO JUVENILES

THAT HAVE A BALE OF MARIJUANA. AND NONE OF THAT EVER HAPPENED IN SCOTT'S FAMILY SO THAT'S JUST NOT ACCURATE.

THE COURT: ALL RIGHT, WE'LL MAKE THE NOTE THAT YOU CHALLENGE THAT. AND THE COURT'S NOT GOING TO CONSIDER THAT AS PART OF THE SENTENCING.

MS. KREECK-MENDEZ: OKAY. YOUR HONOR, PAGE 7, IT'S MINOR, BUT WE WOULD WANT TO HAVE IT CORRECT. PAGE 7, BACKGROUND AND PRESENT LIVING SITUATION. PARAGRAPH 1, SECOND SENTENCE. REPORTED HIS FATHER WAS EMPLOYED BY ALLIED WHILE HIS MOTHER WORKED AT A BOWLING ALLEY. HIS MOTHER DID NOT WORK. IT'S HIS GRANDMOTHER THAT WORKED AT A BOWLING ALLEY.

THE COURT: THE RECORD WILL BE CORRECTED.

MS. KREECK-MENDEZ: AND THEN NEXT SENTENCE, HIS MOTHER DIED WHEN HE WAS FIVE NOT WHEN HE WAS THREE.

THE COURT: THE RECORD WILL BE CORRECTED. ALL RIGHT, ANYTHING FURTHER?

MS. KREECK-MENDEZ: NOT AS FAR AS CORRECTIONS GO. I WOULD LIKE TO MAKE AN ARGUMENT.

THE COURT: ALL RIGHT. THE COURT WILL HEAR FIRST FROM THE PROSECUTION, THEN FROM DEFENSE COUNSEL, AND THEN FROM THE DEFENDANT.

MS. BEATON: JUDGE, THE STATE'S POSITION IS IS THAT THE RECOMMENDATION IS INAPPROPRIATE IN THIS CASE THAT ADULT PROBATION HAS PREPARED. THEY'RE RECOMMENDING APPROXIMATELY A YEAR IN JAIL AND AN IN-PATIENT COUNSELING AND ODYSSEY HOUSE.

AND WHILE ODYSSEY HOUSE IS A GOOD PROGRAM, AND CERTAINLY A YEAR IN JAIL IS A SUBSTANTIAL PERIOD OF TIME, THIS DEFENDANT HAS PLEADED GUILTY AT THIS POINT TO A FIRST DEGREE FELONY. WHAT'S NOT CLEAR FROM THE PRESENTENCE REPORT IS HOW SERIOUS WHAT THE DEFENDANT WAS DOING, WHAT ACTUALLY THE DEFENDANT'S ROLE IN THIS CRIME WAS. I THINK, IF THE COURT HAS ANY CONSIDERATION OR ANY TENDENCY, THE RECOMMENDATION BY ADULT PROBATION AND PAROLE IS NOT CLEAR WHAT'S TAKING PLACE.

WHEN THE OFFICERS GO IN TO SERVE THIS SEARCH WARRANT IN THE NORTHEAST BEDROOM THEY FIND A LAB SET UP AND OPERATING AT THAT POINT IN TIME. WHEN THE OFFICERS TALKED TO THE DEFENDANT THE DEFENDANT SAYS THAT IS HIS BEDROOM. AND THESE ARE THE TYPES OF THINGS THAT ARE FOUND IN THE DEFENDANT'S BEDROOM. AND IF I MAY APPROACH?

THE COURT: HAVE YOU GIVEN A COPY OF THESE DOCUMENTS TO DEFENSE COUNSEL?

MS. BEATON: DEFENSE COUNSEL HAS A COPY OF ALL THE PHOTOGRAPHS.

MS. KREECK-MENDEZ: I WOULD LIKE TO KNOW WHAT YOU'RE SEEING, THOUGH.

MS. BEATON: THIS WAS SUBMITTED AT THE PRELIMINARY HEARING THAT MS. KREEK-MENDEZ HANDLED, AS WELL AS MYSELF. THIS IS THE CLAN --

THE COURT: THIS WILL BE MARKED AS PROSECUTION 1 FOR PURPOSES OF SENTENCING.

MS. BEATON: AND THE OTHER ONE WAS ALSO ADMITTED, WHICH WAS STATE'S EXHIBIT NO. 3, ORIGINALLY AT PRELIMINARY HEARING.

THE COURT: IT WILL BE MARKED AS PROSECUTION 2 FOR PURPOSES OF SENTENCING.

MS. BEATON: THANK YOU.

THE COURT: YOU MOVE THEIR ADMISSION?

MS. BEATON: I DO.

THE COURT: ANY OBJECTION?

MS. KREECK-MENDEZ: NO, YOUR HONOR.

THE COURT: THEY ARE BOTH RECEIVED.

(WHEREUPON, STATE'S EXHIBIT NOS. 1 & 2 WERE OFFERED AND RECEIVED INTO EVIDENCE.)

MS. BEATON: WHAT'S BEEN MARKED AT THIS POINT AS STATE'S EXHIBIT NO. 1 IS PHOTOGRAPHS OF A CLAN LAB THAT WAS FOUND IN THE DEFENDANT'S BEDROOM. YOU CAN SEE THAT THERE'S A SUBSTANTIAL QUANTITY OF SUBSTANCES.

THE OTHER ONE IS STATE'S EXHIBIT NO. 2. IT DEPICTS AGAIN ALL OF THE CLAN LAB ITEMS THAT WERE SEIZED IN THIS CASE AND ALSO TWO OF THE CHILDREN THAT WERE FOUND INSIDE THE HOME WHEN THE SEARCH WARRANT WAS EXECUTED. OBVIOUSLY, THE STATE IS CONCERNED BECAUSE THE OFFICERS RARELY GO INTO A SITUATION WHERE THE CLAN LAB IS OPERATIONAL.

THIS IS A SITUATION WHERE, WHEN YOU LOOK AT THE DEFENDANT'S VERSION TO ADULT PROBATION AND PAROLE HE WANTS TO SAY THE ONLY THING THAT HE'S DOING IN THIS HOME IS THAT HE IS THE PERSON WHO WAS RENTING THE HOME, HE HAD JOSH COME INTO HIS HOME, THE CO-DEFENDANT IN THIS CASE, AND THAT THE CO-DEFENDANT WAS COOKING AND SHOWING HIM HOW TO COOK BUT HE DIDN'T HAVE ANY INVOLVEMENT IN IT.

CLEARLY, THIS IS NOT THE SITUATION GIVEN THE STATEMENT THE DEFENDANT TOLD THE OFFICERS ON THAT DATE. HE SAID THAT THIS PARTICULAR BEDROOM WHERE THE CLAN LAB WAS FOUND IS HIS, HE HAD INDICATED TO THE OFFICERS WHILE HE WAS SITTING THERE, AND THE OFFICERS ARE PREPARING TO SEARCH VARIOUS AREAS OF THE HOME AND THE GARAGE, HE'S TELLING THE CHILDREN THE REASON THAT THE COPS ARE HERE, IT'S BECAUSE IT'S MY FAULT, I'M THE REASON THE COPS ARE HERE. I'M SO SORRY. BECAUSE THE CHILDREN ARE CRYING AT THE TIME THAT THIS IS TAKING PLACE.

HE THEN ALSO TALKS TO THE OFFICERS WHEN THEY PUT HIM IN A CAR. HE INDICATES A VARIETY OF INFORMATION THAT HE HAS. HE'S TALKING ABOUT A JUG THAT'S FOUND AND HE SAYS THAT ORIGINALLY IS METH OIL. HE THEN SAYS THAT'S ACTUALLY WASTE PRODUCT AND HE DIDN'T KNOW WHAT TO DO WITH ALL THE WASTE PRODUCT. SO HE'S HOLDING ON TO THE WASTE PRODUCT.

THERE'S ANOTHER JUG OUT IN THE GARAGE THAT'S FOUND AND HE SAYS THAT'S WASTE PRODUCT AS WELL AND HE DIDN'T KNOW WHAT TO DO WITH IT.

THE OFFICER HAS A CONVERSATION WITH THE DEFENDANT ABOUT HOW DANGEROUS THIS CRIME IS. CLEARLY, THE DEFENDANT'S TALKING ABOUT WASTE PRODUCT. IF HE DIDN'T THINK THAT THIS LAB WAS THAT DANGEROUS HE WOULD HAVE DUMPED THE WASTE PRODUCT DOWN THE DRAIN. INSTEAD, HE'S HOLDING ON TO IT. IT'S CLEAR TO HIM, HE REALLY WASN'T SURE WHAT HE OUGHT TO BE DOING WITH IT. THE DEFENDANT SHOULDN'T HAVE BEEN DOING THIS.

IN TERMS OF THE TYPE OF CRIME THAT WE HAVE HERE, ALL I DO ON A DAY-TO-DAY BASIS IS PROSECUTE METH LABS, AND THAT'S ALL I'VE DONE EVERY DAY FOR A YEAR PERIOD OF TIME. AND THIS DEFENDANT'S GOT A CLAN LAB THAT THEY SEIZE 100 ITEMS FROM IT, ALL THREE OF THE PRECURSORS ARE FOUND IN ORDER FOR HIM TO MANUFACTURE, AND A SUBSTANTIAL QUANTITY OF METHAMPHETAMINE IS FOUND. AND FRANKLY, TO TELL YOU THE TRUTH, THIS CASE WOULD HAVE BEEN SITTING IN FEDERAL COURT RIGHT NOW BUT FOR THE FACT THAT THE OFFICERS, WHEN THEY GOT TO THE SCENE, AND ALL OF THE LIQUIDS THAT THEY FOUND, AND ALL THE DIFFERENT QUANTITIES THAT THEY FOUND, NONE OF THOSE ITEMS WERE WEIGHED. AND IN ORDER TO FILE THIS IN FEDERAL COURT WE WOULD HAVE NEEDED TO KNOW THE EXACT AMOUNT OF WEIGHTS OF METHAMPHETAMINE THAT WE HAD ON THE SCENE. AND BECAUSE THAT WASN'T DONE THIS CASE GOT FILED IN THE STATE COURT.

THERE'S ALSO REFERENCE IN THE POLICE, IN THE ADULT PROBATION AND PAROLE, THAT THERE'S A PROBLEM IN THIS PARTICULAR NEIGHBORHOOD AS WELL. THE DEFENDANT WAS RESIDING IN A DUPLEX.

AND THE INDIVIDUAL NEXT TO THE DUPLEX IS AN INDIVIDUAL WHO WAS CAUGHT SELLING METHAMPHETAMINE, OF COURSE, WHICH HE'S PROBABLY GETTING FROM THE DEFENDANT. AND THE OFFICERS FROM SANDY CITY HAVE RECEIVED INFORMATION AND INTELLIGENCE THAT THAT'S WHERE THAT DEFENDANT WAS GETTING HIS DRUGS WAS FROM THE DEFENDANT'S HOME, BECAUSE THE INDIVIDUAL WHO OWNS THE DUPLEX, WHO LIVES ON THE SIDE OF THE DUPLEX WHERE ORVILLE DORIOUS IS, HE IS THE OWNER OF THE DUPLEX, HE, RIGHT NOW, IS IN FEDERAL COURT ON CHARGES THAT I'VE INDICTED HIM ON, AND THAT'S FOR DISTRIBUTING METHAMPHETAMINE.

SO, CERTAINLY, THE CONCERN THE STATE HAS IS IN ADDITION TO THE FACT WE HAVE AN OPERATIONAL LAB, WE HAVE CHILDREN IN THE LAB, AND WE OBVIOUSLY HAVE ALL OF THE DANGERS THAT ARE ASSOCIATED WITH THIS LAB, BUT WE'RE ALSO RUNNING, BASICALLY, A SITUATION WHERE THIS WHOLE NEIGHBORHOOD IS A NUISANCE BECAUSE THE DUPLEX OWNER IS RENTING TO SCOTTY WRIGHT, WHO HE KNOWS SCOTTY WRIGHT IS MANUFACTURING METHAMPHETAMINE, PROVIDING HIM PRODUCTS SO HE CAN TURN AROUND AND SELL. AND SO WE HAVE A NICE LITTLE (SOMEBODY COUGHED) TAKING PLACE IN THIS DUPLEX WHERE JOSH CORBETT ADMITS HE'S SELLING DRUGS, HE'S BEEN DOING THAT FOR A YEAR. HE, OF COURSE, JUST HAPPENS TO MOVE IN WITH SCOTTY WRIGHT. WE HAVE ALL OF THESE LAB ITEMS FOUND IN THIS PARTICULAR HOME.

AND IT'S THE STATE'S RECOMMENDATION THAT AT A VERY MINIMUM THIS SHOULD BE A SITUATION WHERE THE DEFENDANT SHOULD

GO OUT TO THE UTAH STATE PRISON ON A 60-DAY EVALUATION IN ORDER TO SEE WHETHER OR NOT THEY THINK, AFTER THEY CONSIDER ALL OF THE FACTS IN THIS CASE, WHETHER OR NOT THEY THINK HE OUGHT TO BE PLACED AT THE UTAH STATE PRISON. BUT FRANKLY, IT'S THE STATE'S POSITION THAT THIS IS THE TYPE OF CRIME, IN AND OF ITSELF, IRREGARDLESS OF ALL OF THE OTHER HISTORY THAT THE DEFENDANT HAS, HIS HISTORY IN JUVENILE COURT, HIS HISTORY IN THE FELONY, IN THE ADULT SYSTEM AT THIS POINT, HIS PRIOR DRUG USE, AND ALL OF THE CONCERNS THAT WE HAVE, THIS IS NOT A SITUATION WHERE THIS DEFENDANT IS JUST A USER OF DRUGS, THIS IS NOT A SITUATION WHERE THIS DEFENDANT CAN STAND HERE AND CLAIM THAT HE DIDN'T KNOW WHAT WAS GOING ON IN HIS BEDROOM, IN HIS HOME, HUH-UH. AND IT'S THE STATE'S POSITION HE SHOULD BE PLACED AT THE UTAH STATE PRISON. WE WOULD ALSO ASK FOR RESTITUTION FOR THE CLEAN-UP COSTS THAT ARE ASSOCIATED WITH THIS LAB, WHICH ARE CONSIDERABLE, WHICH ARE IN EXCESS OF $4,000.00.

THE COURT: THANK YOU. COUNSEL?

MS. BEATON: JUST ONE OTHER THING I WANTED TO MENTION TOO. I NOTICE THAT WHEN THE DEFENDANT IS IN THE JAIL PENDING ON THIS PARTICULAR CASE HE APPARENTLY GETS RECLASSIFIED WHILE HE IS IN THE JAIL BECAUSE EVEN WHILE HE'S PENDING THIS CASE HE'S TRYING TO MAKE ALCOHOL WHILE HE'S SITTING IN THE SALT LAKE COUNTY JAIL. AND OBVIOUSLY, HIS CONDUCT WOULD INDICATE THAT HE DOESN'T CONSIDER THIS TO BE A SERIOUS MATTER.

THE COURT: WELL, THE RECORD INDICATES HE'S NOT ONLY TRYING --

MS. BEATON: THAT HE'S MAKING.

THE COURT: HE MADE IT. AND THAT HE CAME TO BE THE OBJECT OF A DISCIPLINARY ACTION. THE DEFENDANT WAS PLACED IN MEDIUM SECURITY AFTER RECEIVING A DISCIPLINARY ACTION FOR MAKING HOOCH. "HOMEMADE BOOZE."

MS. KREECK-MENDEZ: YOUR HONOR, SCOTT'S READY TO TALK TO YOU ABOUT THAT CAUSE I THINK HE CAN BETTER RESPOND TO THAT. IT'S NOT UNCOMMON. AND THAT'S NOT AN EXCUSE, IT'S JUST VERY PREVALENT.

I'D LIKE TO START WITH SOME OF MS. BEATON'S COMMENTS. THERE IS A PROBLEM IN THIS NEIGHBORHOOD BUT SCOTTY WRIGHT IS NOT WHERE THAT PROBLEM INITIATED. ORVILLE DORIOUS IS SITTING IN FEDERAL PRISON. THERE WAS A LAB BUST AT THIS HOUSE MONTHS BEFORE, MONTHS BEFORE SCOTT WAS EVEN IN THE PICTURE. AND, IN FACT, WHEN I WAS TALKING TO THE OFFICERS TO SORT THIS OUT, I COULDN'T FIGURE THAT PART OF IT OUT. AND THE OFFICER TOLD ME THAT HAD NOTHING TO DO WITH SCOTT. THEY CLEANED THAT HOUSE UP AND THEN MORE PEOPLE THAT ARE INVOLVED IN METHAMPHETAMINE MOVED IN. THAT'S WHAT THE OFFICER TOLD ME IN THE HALL WHEN I WAS TRYING TO FIGURE OUT WHAT THAT HAD TO DO WITH SCOTT. NOTHING. IT HAS NOTHING TO DO WITH SCOTT. OTHER THAN THE FACT THAT SOMEBODY, MY POSITION IS, PROBABLY MR. DORIOUS, KEPT THINGS MOVING IN THAT HOUSE TO KEEP HIS BUSINESS GOING.

SCOTT IS NOT THE PERSON WHO WAS STOPPED. THE WAY THIS BUST WENT DOWN IS THE OFFICER DID A TRAFFIC STOP. THE PERSON THAT WAS STOPPED THERE SAID, WELL, I'M GOING WITH A FRIEND TO FIND WORK. THERE IS DRUG PARAPHERNALIA; THERE'S DRUGS. THERE'S A LITTLE, WHAT OFFICERS FEEL LIKE PROBABLY THERE IS A MEETING AT THE CONVENIENCE STORE FOR SOMETHING MORE. THEY GO AND THEY FOLLOW JOSH CORBETT. JOSH CORBETT, IN FACT, WAS GOING TO SELL DRUGS, NOT SCOTT WRIGHT. JOSH CORBETT THE SAYS TO THE OFFICERS, WELL, I GOT A LAB BACK AT THE HOUSE. AND HE SAID ALL THESE THINGS ABOUT SCOTT WRIGHT, WHICH HE, AT THIS TIME, IS A CO-DEFENDANT THAT IS BEING LET GO, TO WALK OFF, TO GO DO WHATEVER HE WANTS TO DO AT THAT TIME. THERE IS, IN FACT, A LAB THERE WHEN THEY SEARCH FOR THE WARRANT. THEY DID A LOT OF WORK ON THIS CASE, YOUR HONOR. BECAUSE I STRUGGLED WITH IT. AND I KNOW WHAT I BELIEVE, NOT CRITICAL, BUT I REALLY BELIEVE THAT SCOTT WAS A MINOR ROLE. BUT THAT DOESN'T MEAN HE WASN'T GUILTY. AND SCOTT AND I DID A LOT OF WORK ABOUT THIS. THIS IS A BROAD STATUTE, YOU PROVIDE A PLACE TO COOK, YOU GET PAID OFF IN DRUGS, YOU'RE GUILTY.

THE COURT: DO YOU BELIEVE THAT?

MS. KREECK-MENDEZ: I DO BELIEVE THAT. I DO BELIEVE THAT. I BELIEVE THAT THAT IS WHAT IT IS. AND I HAVE STRUGGLED BECAUSE I DON'T -- THE STATUTE IS SO BROAD, YOUR HONOR. WE, IN OUR OFFICE HAVE GONE OVER IT BACKWARDS AND FORWARDS. IF YOU ARE A PARTY TO THE OFFENSE, IF YOU, IN ANY WAY KNOW THAT THIS

IS HAPPENING AND CONTRIBUTE TO IT IN ANY WAY, I THINK THE STATUTE IS BROAD, AND AS YET IT IS NOT UNCONSTITUTIONAL, BUT I'M STILL WORKING ON THAT ELEMENT OF IT.

BUT WE HAD THIS SET FOR A MOTION. WE CAME IN. AND IN GETTING READY FOR THE MOTION I TALKED WITH SCOTT'S FATHER AND HIS FAMILY. SCOTT HAD BEEN MOVING OUT OF THAT HOUSE. HE WAS SCARED ABOUT WHAT WAS GOING ON IN THERE BUT HE WAS ALSO VERY ADDICTED AND VERY MUCH STILL USING THE DRUGS. HE HADN'T STAYED THERE THE NIGHT BEFORE THIS HAPPENED. HIS FATHER HAD BEEN THERE WITH HIM MOVING ALL OF HIS STUFF OUT OF THAT ROOM. WHEN HE CAME BACK THE LAST TIME TO TAKE THE LAST LOAD OF STUFF, AND WHEN YOU LOOK AT THE PICTURES THERE'S NOT, IT'S NOT A LIVED-IN ROOM. THERE'S NOT A PLACE FOR HIM TO BE. THERE'S SOME, I THINK THERE IS A FISHING POLE AND A TOOL CHEST OF HIS LEFT IN THERE. AND THERE'S A LOCK ON THE DOOR.

AT THE PRELIM WE SPENT A LOT OF TIME TALKING ABOUT THE FACT THE DOOR APPEARED TO BE KICKED IN, BUT THE OFFICER WASN'T SURE WHO TOOK THAT PICTURE OR WHO KICKED IT IN, BUT THERE IS A HOLE IN THE DOOR WHEN YOU LOOK AT THE DOOR.

HE HAD GONE OUT TO THE GARAGE AND ASKED ORVILLE, WHILE HE WAS IN THE GARAGE, AND I THINK THESE PICTURES WITH THE KIDS THERE ARE INFLAMMATORY BECAUSE HIS GIRLFRIEND HAD COME IN WHILE HE WAS OUT IN THE GARAGE TALKING TO MR. DORIOUS ABOUT WHY HIS DOOR WAS LOCKED. MR. DORIOUS IS SAYING BECAUSE I WANT MY MONEY. SHE CAME IN, SHE CAME IN TO THE HOUSE WITH THE

CHILDREN. HE DIDN'T KNOW THEY WERE THERE AND SHE DIDN'T KNOW THAT THERE WAS A LAB THERE. HE DID TAKE RESPONSIBILITY. IT'S MY DRUG ACTIVITY THAT CAUSED THE POLICE TO BE HERE, THAT CAUSED THIS PROBLEM. AND HE WANTED THE KIDS TO BE CALM. HE WAS TRYING TO EASE THEM. AND HE DOES TAKE RESPONSIBILITY.

YOUR HONOR, I HAVE INTERVIEWED MANY, MANY WITNESSES. I HAVE PULLED UP RECORDS. JOSH CORBETT HAS THREE CLAN LABS AT THIS TIME, DATING ONE BEFORE AND ONE AFTER THIS INCIDENT. HE HAS -- MR. DORIOUS HAS HIS FEDERAL CHARGES. SCOTT'S RECORD IS HERE BEFORE YOU. AND WHILE IT'S NOT WHAT I WOULD WANT IT TO BE IT IS NOT AS BAD AS WE USUALLY SEE BEFORE US.

YOUR HONOR, SCOTT'S BEEN IN JAIL FOR A LONG TIME. IT IS THE FIRST TIME HIS HEAD HAS BEEN CLEARED SINCE HIS WIFE LEFT HIM IN '98. DRUGS PLAYED A ROLE IN THAT, BUT HE JUST WENT OFF THE DEEP END AT THAT POINT. HE STILL WORKED. HE'S CONSISTENTLY WORKED. HE PAID CHILD SUPPORT WHEN HIS WIFE WENT ON, GOT INVOLVED WITH THE WELFARE SYSTEM, AND I'M NOT SURE AT WHAT LEVEL, O.R.S. WAS GARNISHING 50 PERCENT OF HIS WAGES AND HE WAS PAYING THAT. NOW, IN THE RECENT MONTHS, PRIOR TO BEING IN CUSTODY ON THIS, HE WASN'T WORKING AS MUCH. HE WAS PICKING UP ODD JOBS. HE HAD FALLEN DOWN.

BUT, YOUR HONOR, WE HAVE A YOUNG MAN HERE. HE HAS A WORK HISTORY. HE HAS A GOOD WORK HISTORY AND HE HAS SKILLS. AND EVEN IN ALL OF HIS STUPIDITY, WHEN I TALKED TO HIS FAMILY, TALKED TO EVERYONE, HE WAS STILL AN EMOTIONAL FATHER FOR HIS

CHILDREN. TOWARDS THE END HE WASN'T FINANCIALLY THERE BUT HE HAD BEEN THERE BEFORE.

I KNOW THIS CASE IS BAD, BUT HIS ROLE IN IT IS DIFFERENT THAN JOSH CORBETT'S. JOSH CORBETT IS A PERSON THAT IS AT A GAS STATION, FOR WHAT I WOULD PURPORT THERE IS NO EVIDENCE, AND YOU GOT TO GIVE IT THE WEIGHT THE COURT REQUIRES, BUT IT LOOKS LIKE HE'S THERE TO GIVE THIS OTHER GUY A DRUG DEAL. AND HE'S OUT. HE'S OUT ON, HE WAS OUT, HE GOT OFF OF THE FIRST LAB --

MS. BEATON: HE'S ON WARRANT.

MS. KREECK-MENDEZ: HE'S NOT ON WARRANT NOW, HE'S IN JAIL NOW.

THE COURT: JUST A MOMENT. YOU'RE ENTITLED TO SAY WHATEVER YOU WANT WITHOUT INTERRUPTION. GO AHEAD.

MS. KREECK-MENDEZ: OKAY. YOUR HONOR, HE HAD A LAB AND GOT OUT. THERE'S TWO WAYS YOU GET OUT WHEN YOU HAVE A LAB, YOU'RE A STELLAR CITIZEN, BUT FOR THAT, YOU BAIL -- SO THERE'S FOUR WAYS -- YOU TELL, YOU GIVE INFORMATION, YOU PROVIDE THE POLICE WITH SOMEONE ELSE, WHICH I WOULD BET IS WHAT JOSH CORBETT'S ENTIRE PLAN WAS IN THIS.

HE DID HAVE A WARRANT FOR A LONG TIME AND THEN HE WAS RECENTLY PICKED UP AND SENT SCOTT A LETTER, WHICH SCOTT PROMPTLY SAID TO ME, LOOK, THIS WILL DO IT. AND IT SAYS, MAN, I'M SORRY YOU'RE IN THIS MESS, I'M SORRY I GOT YOU IN THIS MESS, I'LL DO ANYTHING FOR YOU. WHICH I SAID, WELL, THAT AND A

DOLLAR WILL GET YOU A CUP OF COFFEE, CAUSE THAT'S NOT WORTH ANYTHING TO THE COURT. BUT IT DOES TELL ME THAT JOSH DOES HAVE A ROLE IN ALL OF THIS, HE HAS A BIGGER ROLE THAN SCOTT.

WE GOT THREE ROWS OF PEOPLE HERE OF FAMILY THAT ARE SUPPORTIVE. SCOTT DOESN'T COME FROM A CLEAN BACKGROUND. HE HAD A HARD TIME OF IT. HIS MOTHER DIED. HIS FATHER HAS BEEN INVOLVED WITH METHAMPHETAMINE AND HAS HAD TO REALLY FIGHT IT. HE'S REALLY IMPROVED AND HE WORKED REALLY HARD TO BE ABLE TO PROVIDE ME AND WORK WITH ME IN THIS CASE. SCOTT CAN SEE THAT SOMEONE CAN DO THAT, THEY CAN PULL OUT OF IT. IT'S NOT BEEN EASY. HIS DAD IS A LONG, LONG-TERM ALCOHOLIC AND THE METH.

YOUR HONOR, I DON'T BELIEVE A DIAGNOSTIC IS NECESSARY. WE HAVE A REALLY SERIOUS DRUG ADDICT. HE'S GOING TO TALK TO YOU ABOUT THE ALCOHOL. IT IS A PROBLEM. I KNOW THAT. BUT I WOULD ASK YOU, YOUR HONOR, TO GIVE HIM THE YEAR IN JAIL BUT LET HIM BE RELEASED WHEN THERE'S A BED AVAILABLE. AND YOUR HONOR, I WOULD ASK YOU TO LEAVE IT TO THE P.O. THAT'S ASSIGNED. WE HAVE HIM SCREENED FOR FIRST STEP. AND REALISTICALLY, HE'S FINE TO GO TO ODYSSEY. AND WE HAVE HIM SET UP FOR THAT.

HE HAS A CONCERN ABOUT HIS CHILDREN, ABOUT FINANCIALLY AND EMOTIONALLY SUPPORTING THEM. I WOULD PREFER HE BE AT FIRST STEP HOUSE. HIS SISTER THINKS HE NEEDS A YEAR OF TREATMENT. FIRST STEP CAN PROVIDE THAT FOR HIM BECAUSE HE WILL DO THE IN-PATIENT PART OF IT. THAT'LL BE FOUR TO SIX MONTHS,

DEPENDING ON HIS SUCCESS, THEN HE'LL DO THE AFTER CARE. THEY SLOWLY WORK HIM BACK INTO THE COMMUNITY, WHICH IS CRITICAL WITH METHAMPHETAMINE, WHICH WORKS ON COMMUNITY TRIGGERS.

THIS IS A YOUNG MAN WHO HAS WORKED REALLY HARD WITH ME ON THIS CASE. HE HASN'T BEEN, IT HASN'T BEEN AN ATTITUDE OF I DON'T CARE, OR I'M NOT PART OF THIS, OR I'M NOT RESPONSIBLE, IT'S, I JUST WANT THE JUDGE TO KNOW WHAT I'M REALLY RESPONSIBLE FOR. AND I ARGUE THAT THIS, IN FACT, IS WHAT HE IS RESPONSIBLE FOR. THERE WAS A LAB THERE BUT HE DIDN'T PUT THAT THERE AND HE DIDN'T SET IT UP THERE, BUT HE SURE TOOK IN THE PROCEEDS AND ALLOWED IT TO HAPPEN AND ALLOWED IT TO CONTINUE ON. AND HE PUT HIMSELF AROUND PEOPLE. AND HE'S CUT THOSE TIES. IT'S HIS FAMILY WHO IS HERE TODAY, IT'S NOT THOSE FRIENDS. IT'S HIS FAMILY, WHO, HE'S BURNED THEM MORE TIMES THAN HE WANTS TO REMEMBER. HIS COMMENTS TO ME IS THEY ARE THE PEOPLE THAT THROUGH IT ALL, THROUGH MY ATTITUDE, THROUGH MY EVERYTHING, HAVE BEEN SITTING THERE, WERE THERE FOR ME. THEY ARE AREN'T AFRAID TO CONFRONT HIM. IT'S AMAZING TO ME HOW QUICKLY THEY'LL CALL HIM ON HIS LITTLE B.S. THAT HE HAS.

I WOULD ASK YOU TO PLEASE GIVE HIM THE TIME IN JAIL BUT LET HIM GET OUT WHEN THERE'S A BED, WHICH COULD BE A WHILE, ESPECIALLY IF YOU DETERMINE THAT ODYSSEY IS APPROPRIATE. HE WILL DO THE DIAGNOSTIC BUT I THINK WE ARE GOING TO HAVE SIMILAR RESULTS. HE HAS WORKED HARD BUT FOR THE MAKING ALCOHOL IN THE JAIL. HE IS NOT A BEHAVIOR PROBLEM, HE'S NOT A DISCIPLINE

PROBLEM, AND PROBABLY WILL, AFTER HIS PUNISHMENT PERIOD'S OVER, BE RECLASSIFIED BACK TO MINIMUM IN MY EXPERIENCE.

THE COURT: ANYTHING THE DEFENDANT WOULD LIKE TO SAY?

THE DEFENDANT: YEAH, YOUR HONOR. AS FAR AS THE HOOCH INCIDENT'S CONCERNED.

THE COURT: THAT'S A NO BRAINER WITH THE COURT. LET'S MOVE ON.

THE DEFENDANT: ALL RIGHT. I'D JUST LIKE TO SAY THAT I KNOW HOW IT ALL APPEARS.

THE COURT: HOW DOES IT APPEAR?

THE DEFENDANT: WELL, IT APPEARS THAT --

THE COURT: TELL ME, INASMUCH AS YOU HAVE OPENED UP THE DIALOGUE WITH THE COURT, WHOSE BEDROOM WAS ALL THE STUFF THAT'S SET FORTH IN THE EXHIBIT 1 OWNED BY?

THE DEFENDANT: IT WAS THE BEDROOM THAT I OCCUPIED.

THE COURT: NO. 2, HOW LONG HAD YOU BEEN A RESIDENT OF THAT HOUSE?

THE DEFENDANT: TWO MONTHS.

THE COURT: NO. 3, HOW MANY BEDROOMS IN THE HOUSE?

THE DEFENDANT: THREE.

THE COURT: HOW MANY OCCUPANTS IN THE HOUSE?

THE DEFENDANT: THREE.

THE COURT: GO AHEAD AND SAY WHAT YOU'D LIKE.

THE DEFENDANT: WELL, I'D JUST LIKE TO SAY THAT AS FAR AS THE POLICE, THAT SAID THAT I TOLD 'EM WHERE THINGS WERE

OR WHAT NOT, I WAS INTERROGATED FOR SIX HOURS IN THE GARAGE AND I DID LET 'EM KNOW WHAT I KNEW ABOUT WHERE THINGS WERE. AS FAR AS JOSH HAD TOLD ME. AND THERE WAS A LOCK ON MY DOOR. I HADN'T BEEN IN THAT ROOM AND SEEN ANY LAB SET UP. I DIDN'T KNOW IT WAS IN THERE OR I WOULDN'T HAVE CLAIMED IT AS MY ROOM. I WASN'T ON THE LEASE AND IT'S REALLY, IT'S REALLY NOT MY GIG, YOUR HONOR. I KNOW IT LOOKS THAT WAY AND THE PROSECUTION'S MAKING IT OUT TO BE THAT WAY, BUT I JUST HOPE YOU CAN SEE ME FOR WHO I AM AND KNOW THAT I DESERVE A SECOND CHANCE.

MS. KREECK-MENDEZ: YOUR HONOR, I WILL NOTE ONE POINT. HE DID HAVE A LACK OF KNOWLEDGE AS TO THE COOKING PROCESSES AS I TRIED TO WORK, TO TALK TO HIM, AND I KNOW IT DOESN'T TAKE AN EINSTEIN TO MAKE METHAMPHETAMINE, BUT IN MY CONVERSATIONS WITH HIM IT DEFINITELY WAS SOMEONE ON THE PERIPHERY HAD GENERAL KNOWLEDGE, HE EVEN CALLED THE STUFF IN THE JUGS WHEN HE TOLD THE OFFICER THERE'S SOME STUFF THAT I THINK THAT'S DANGEROUS, HE CALLED IT METH OIL, AND IN FACT IT WASN'T METH OIL IT'S METH WASTE.

THE COURT: NEVERTHELESS, DANGEROUS.

MS. KREECK-MENDEZ: DANGEROUS, BUT IT KINDA SUPPORTS THAT HE DID HAVE A LACK OF KNOWLEDGE, WHICH I KNOW THAT'S A DOUBLE-EDGED SWORD BECAUSE MESSING WITH THIS STUFF WITH A LACK OF KNOWLEDGE IS DANGEROUS BUT IT'S NOT SOMETHING HE'S GOING TO PROLIFERATE. AND HE IS NOT ONE OT THESE PEOPLE THAT GETS HIGH OFF OF THE HIGH OF COOKING. HE IS SOMEONE, IF YOU GIVE HIM A

SHOT AT THIS HE'S GOING TO DO IT.

THE COURT: ANYTHING ANYBODY ELSE WOULD LIKE TO SAY?

MS. BEATON: ALSO, HE IDENTIFIED THE VENT BAG IN THE GARAGE AND TOLD THE OFFICERS THEY SHOULD BE CAREFUL OF THAT AS WELL. THE SITUATION, TO CLARIFY WITH JOSH CORBETT, HE WAS OUT ON BENCH WARRANT AND THE COPS WERE LOOKING FOR HIM. HE WAS ORIGINALLY ARRESTED AND RELEASED ON SOME SORT OF RELEASE ARRANGEMENT AND THEN OUT ON BENCH WARRANT SO HE HASN'T BEEN RUNNING THE STREETS, HE HASN'T PROVIDED ANY COOPERATION, AND HE'S CURRENTLY SET FOR TRIAL ON THIS SAME CHARGE RIGHT NOW.

ORVILLE DORIOUS IS NOT IN FEDERAL PRISON AT THIS POINT. HE'S CURRENTLY PENDING ON HIS CHARGES. AND HIS M.O. IS HE LIKES TO RENT TO COOKS. DURING THE PERIOD OF TIME THAT THE CHARGES THAT HE HAS THAT WAS DURING THE TENURE WHEN SCOTT WRIGHT WAS IN THE DUPLEX NEXT TO HIM, NOT THE OTHER CLAN LAB COOK THAT HE HAD RENTED TO PREVIOUSLY.

THE COURT: ANYTHING FURTHER?

MS. BEATON: THAT'S IT.

THE COURT: ANY LEGAL REASON WHY SENTENCE SHOULD NOT BE IMPOSED?

MS. KREECK-MENDEZ: NO, YOUR HONOR.

THE COURT: EVERYONE HAS TAKEN A GENEROUS AMOUNT OF TIME IN EXPLAINING THEIR RESPECTIVE POSITIONS ON THE CASE. LET THE COURT, UNLESS THERE'S TOO MUCH READING BETWEEN THE LINES GOING ON BY THE COURT, EXPLAIN ITS POSITION.

IN THE FIRST PLACE, IF YOU STARTED WITH THE MOST FUNDAMENTAL OF ALL FUNDAMENTAL CONCEPTS, EVEN THOUGH THIS HOUSE HAD THREE BEDROOMS, IT WAS THE DEFENDANT'S HOUSE, AS FAR AS THE BEDROOM IN IT. HE ACKNOWLEDGED IT, THERE'S NO DISPUTE ABOUT THE OWNERSHIP OF THE BEDROOM, AND IT'S NOT UNCOMMON FOR THREE OR FOUR OR FIVE ADULTS TO RENT A HOUSE AND EACH ONE OF THEM STAKE OUT THEIR OWN LITTLE BAILIWICK INSIDE THE HOUSE AND USE COMMON AREAS BETWEEN THEM. BUT THE BEDROOM GENERALLY IS AN OFF LIMITS PLACE. GENERALLY.

IT DEFIES LOGIC AND IT DEFIES REASON FROM THE COURT'S POINT OF VIEW THAT THE DEFENDANT NOT ONLY WAS EXTREMELY MINDFUL AND AWARE OF WHAT WAS GOING ON IN THE HOUSE, IN HIS BEDROOM, BUT HE ACQUIESCED AND PARTICIPATED. IF SOMEBODY RENTED A HOUSE AND PAID THEIR FAIR SHARE OF THE RENT AND A CO-TENANT BROUGHT ALL THAT STUFF IN AND STUCK IT IN HIS BEDROOM AND HE DIDN'T WANT IT THERE, THE FIRST THING HE'D DO IS PUNCH THE CO-TENANT, CALL THE POLICE, ROUND THE STUFF UP AND THROW IT IN A DUMPSTER. AND THAT JUST SIMPLY ISN'T WHAT HAPPENED HERE.

BEYOND THAT, METH IS A DIRTY, UGLY, DESPICABLE, DEPLORABLE BUSINESS. IT'S NOT MADE FOR INDIVIDUAL CONSUMPTION, IT'S MADE FOR DISTRIBUTION. IT IS POISON THAT CAN BE COOKED BY ANYBODY THAT HAS A MODEST AMOUNT OF INTELLIGENCE THAT CAN READ. THE RECIPES ARE PUBLISHED ON THE INTERNET. AND IT'S NOT LIKE GROWING EIGHT OR 10 MARIJUANA PLANTS AND HARVESTING THOSE PLANTS PERIODICALLY FOR YOUR OWN USE. WHEN PEOPLE START

COOKING THIS STUFF THEY KNOW TWO THINGS. IT'S A POISON THAT IS IN HIGH DEMAND AND IT IS A POISON THAT HAS A HIGH MARGIN OF PROFIT. IT COSTS LITTLE OR NOTHING TO MAKE IT AND THE PROFIT IS ABSOLUTELY MIND-BOGGLING. AND IT JUST MAKES THE WHOLE NOTION OF COOKING THAT MUCH MORE DESPICABLE. ANYBODY WITH A HUNDRED BUCKS, 50.00 BUCKS, OR WHATEVER THE GOING PRICE IS ON A GIVEN MORNING CAN KNOCK ON THE DOOR AND KNOW THERE'S A FRESH BATCH THAT'S BEEN COOKED AND THEY LAY THE QUID PRO QUO ON THE PALM OF THE HAND, THIS STUFF IS IN THE OTHER HAND, AND THEY'RE OUT OF THE DOOR AND ON THEIR WAY.

THE PROBLEM IS WITH WHAT IS SO ABSOLUTELY GLARING IN PLAINTIFF'S EXHIBIT NO. 2 THAT WAS ADMITTED FOR PURPOSES OF THIS SENTENCING, IRRESPECTIVE OF THE SOPHISTICATION OF THE CHEF, THIS STUFF IS HIGHLY DANGEROUS. AND YOU CAN PICK UP A NEWSPAPER AND PRACTICALLY ON A DAILY BASIS SOME PLACE, ONE OF THESE THINGS GOES SOUTH AND A FIRE STARTS OR A CONTAMINATION GETS SPREAD. AND WHAT DO THESE KIDS KNOW ABOUT IT? THEY'RE THERE EXPOSED TO ALL OF THE STUFF THAT GOES ON. THEY DON'T HAVE THE SOPHISTICATION THAT EITHER A DETECTIVE OR DEFENDANT CAN DEFEND THEMSELVES FROM IT. THE STUFF, FIRST AND FOREMOST, IS UGLY TO THE PEOPLE WHO USE IT AND THEN IT CONTAMINATES THE PEOPLE IN THE HOUSE, IT CONTAMINATES THE PEOPLE IN THE NEIGHBORHOOD, IT CONTAMINATES THE PEOPLE IN THE COMMUNITY. AND IF I'M THE ONLY ONE IN THIS ENTIRE COURTROOM THAT HAS MADE THAT DEDUCTION SO BE IT. THAT IS MY OPINION.

AND I DON'T BUY INTO THIS NOTION THAT THE DEFENDANT WAS EQUIVALENT TO THOSE THREE MONKEYS THAT WE READ ABOUT PERIODICALLY, THEY SEE NOTHING, THEY HEAR NOTHING, THEY SPEAK NOTHING. I'M NOT BUYING IT.

AND WE KNOW FOR SURE THAT FOR WHATEVER REASON HE WAS GETTING ENOUGH OF THIS STUFF FOR HIS OWN PERSONAL USE. I MEAN, THERE HAD TO BE SOME QUID PRO QUO SOME PLACE ALONG THE WAY. IT'S A VERY COLD, IT'S A VERY CALLOUS, IT'S A VERY CALCULATING, UGLY SUBCULTURE AND PEOPLE UP AND DOWN THIS STREET AND UP AND DOWN THE STREETS OF EVERY TOWN IN THE UNITED STATES SEEM TO BE EITHER DIRECTLY OR TANGENTIALLY VICTIMIZED WITH THIS. THE TAX PAYERS IN THIS CASE HAVE A $4,000.00 BILL BECAUSE POLICE OFFICERS HAVE TO DRESS UP LIKE ASTRONAUTS AND GO INTO THAT APARTMENT AND CLEAN IT UP. THIS STUFF IS SO HIGHLY CONTAMINATED THAT THEY'RE NOT GOING TO SMELL IT, THEY'RE NOT GOING TO TOUCH IT, THEY'RE NOT GOING TO STEP IN IT. THEY DRESS UP LIKE THEY'RE GOING TO MARS TO DEAL WITH IT. WHAT KIND OF PROTECTION DO THE KIDS HAVE? THEY RUN AROUND BAREFOOTED WITH A SHIRT AND A PAIR OF PANTS ON. IT IS JUST ABSOLUTELY DESPICABLE.

I'VE READ THE PRESENTENCE REPORT CAREFULLY. I AM CONVINCED THAT THE DEFENDANT WAS IN THIS MESS UP TO HIS EARS. AND I HAVE READ NOR HEARD NOTHING TODAY THAT CAUSES ME TO THINK TO THE CONTRARY.

HE'S BEEN CONVICTED OF A FIRST DEGREE FELONY. NO

LEGAL REASON HAS BEEN ESTABLISHED WHY SENTENCE SHOULD NOT BE IMPOSED. HE'S COMMITTED TO THE UTAH STATE PENITENTIARY FOR THE TERM PRESCRIBED BY LAW. HE IS FINED $10,000.00 AND THE MAXIMUM SURCHARGE IS IMPOSED. HE IS ORDERED TO PAY THE CLEANUP FEE JOINTLY AND SEVERALLY, IF SOMEBODY ELSE IS INVOLVED IN THAT PROCESS. AND IT IS MY HOPE THAT THIS MORNING, THE WORD GOES OUT, IF YOU COOK IN THIS TOWN AND YOU COME TO MY COURT YOU'RE GOING TO PRISON.

TAKE HIM AWAY.

(WHEREUPON, THE HEARING WAS CONCLUDED).

* * *

IN THE UTAH COURT OF APPEALS

----ooOoo----

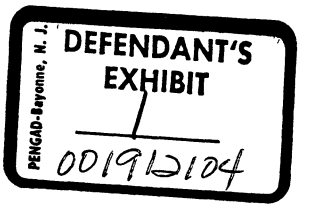
State of Utah,	)	
	)	
Plaintiff and Appellee,	)	ORDER
	)	
v.	)	Case No. 20010345-CA
	)	
Scott Allen Wright,	)	
	)	
Defendant and Appellant.	)	

Before Judges Bench, Davis, and Thorne.

This case is before the court on a motion to remand the case to the trial court for entry of findings of fact necessary for determination of a claim of ineffective assistance of trial counsel under Rule 23B of the Utah Rules of Appellate Procedure. The rule allows supplementation of the record with "findings of fact necessary for the appellate court's determination of a claim of ineffective assistance of counsel." Utah R. App. P. 23B(a).

Wright alleges that trial counsel was ineffective in advising him on the elements of the offense to which he entered a guilty plea. Because Wright did not file a timely motion to withdraw the guilty plea under Utah Code Ann. § 77-13-6 (1999), we do not remand on this issue, which constitutes a challenge to the validity of the guilty plea. Wright also alleges that trial counsel was ineffective in representing him at sentencing. Our remand is limited to issues regarding the latter claim.

IT IS HEREBY ORDERED THAT the motion for remand is granted, in part, and the case is temporarily remanded to the trial court for the purpose of entry of findings of fact relevant to only the claim that trial counsel rendered ineffective assistance at sentencing. The factual issues relevant to the claim to be addressed by the trial court shall include the following: (1) what efforts were undertaken by trial counsel in preparation for sentencing and what additional efforts could have been undertaken; (2) what were counsel's reasons for handling sentencing as counsel did; (3) what additional information relevant to sentencing could have been discovered by counsel prior to sentencing; and (4) was the omission of the additional information prejudicial to Wright at sentencing.



BOARD OF PARDONS AND PAROLE
448 EAST 6400 SOUTH
MURRAY, UTAH 84107

DEAR BOARD OF PARDONS AND PAROLE MEMBERS,

I AM SENDING THIS LETTER ON BEHALF OF MY BROTHER SCOTT WRIGHT #31529. SCOTT IS CURRENTLY BEING HOUSED AT THE UTAH STATE PRISON AFTER PLEADING GUILTY TO A FIRST DEGREE FELONY DRUG CHARGE. FIRST, LET ME THANK YOU FOR THIS OPPORTUNITY TO EXPRESS MY OPINIONS AND FEELINGS REGARDING SCOTT, THIS IS SOMETHING I HAVE NOT YET HAD THE PRIVILEGE OF DOING. I'M NOT QUITE SURE WHERE TO BEGIN, I GUESS WHAT I WOULD LIKE DO IS TO TRY AND GIVE YOU A FEEL FOR THE PERSON THAT I KNOW AND LOVE. THERE ARE SO MANY THINGS THAT I THINK YOU SHOULD KNOW BEFORE DETERMINING THE AMOUNT OF TIME YOU DEEM APPROPRIATE FOR HIM. I WANT YOU TO KNOW THAT I REALIZE A CRIME HAS BEEN COMMITTED AND THAT THERE ARE PUNISHMENTS THAT MUST BE ENFORCED IN ORDER TO PROTECT THE PUBLIC, MY FAMILY INCLUDED. I AM 33, I HAVE FOUR CHILDREN 12, 11, 10, AND 8. I HAVE BEEN MARRIED TO THE SAME PERSON FOR OVER THIRTEEN YEARS. I AM A LAW ABIDING CITIZEN WHO ON OCCASION HAS HAD A SPEEDING TICKET. MY HUSBAND HAS BEEN EMPLOYED WITH THE SAME COMPANY FOR OVER TEN YEARS. WE OWN A HOME, WE PAY TAXES AND LIVE LIKE A MAJORITY OF THE PEOPLE IN SALT LAKE DO. I WANT YOU TO KNOW I AM NOT A DRUG USER, NOR DO I CONDONE SUCH BEHAVIOR, AND I AM AS CONCERNED FOR MY CHILDREN AND THEIR SAFETY AS ANYONE IS. I DON'T KNOW THAT I CAN EXPRESS TO YOU HOW MUCH MY FAMILY MISSES SCOTT. SCOTT IS A VERY SENSITIVE AND LOVING PERSON WHO HAS ALWAYS DONE FOR OTHERS BEFORE HIMSELF. MY BROTHER IS HOWEVER A DRUG ADDICT AND HAS MADE SEVERAL WRONG DECISIONS DURING HIS BOUT WITH ADDICTION. ONE THING I WOULD LIKE TO IMPRESS UPON YOU IS THE FACT THAT EVEN THOUGH SCOTT HAS THIS VERY SERIOUS PROBLEM, HE STILL REMAINS A LOYAL, TRUSTWORTHY, DEPENDABLE PERSON. SOMETHING THAT IS VERY RARE UNDER THE CIRCUMSTANCES. MOST ADDICTS ARE NO LONGER DEPENDABLE, THEY ARE NOT IN ANY WAY CARING, THEY ARE SIMPLY CONSUMED WITH ONLY THEMSELVES. THIS IS NOT THE CASE FOR MY BROTHER. THROUGH ALL OF HIS LIFE HE HAS BEEN VERY MUCH THE OPPOSITE. IF HE WAS NEEDED, HE WAS THERE. YOU COULD ASK HIM FOR ANYTHING AT ANYTIME AND NEVER BE REFUSED. SINCE THIS HAS HAPPENED I HAVE HAD THE OPPORTUNITY TO SPEAK WITH A FEW OF HIS PREVIOUS EMPLOYERS, ALL OF WHOM SAID THE SAME OF HIM AND INDICATED THAT THEY WOULD BE HAPPY TO EMPLOY HIM AGAIN IF HE

SO DESIRED WHEN I HEAR SUCH COMMENTS FROM OTHERS IT MAKES ME VERY PROUD. SCOTT HAS HAD THE OPPORTUNITY TO STEAL FROM THESE EMPLOYERS AS MANY OF THEIR EMPLOYEES DID. HE HAD THE OPPORTUNITY TO TAKE ADVANTAGE OF HIS FAMILY, TO LIE, TO CHEAT AS WELL AS COUNTLESS OTHER THINGS THAT MOST ADDICTS FIND THEMSELVES DOING IN ORDER TO SUSTAIN A HABIT THEY CAN NO LONGER CONTROL. SCOTT DID NONE OF THESE THINGS. THROUGHOUT HIS ADDICTION THE WORSE THING HE DID TO ANY OF US AND HIMSELF WAS TO DENY WHAT IS NOW SO PAINFULLY OBVIOUS. SCOTT WILL BE 30 THIS JUNE, AND UNFORTUNATELY IF YOU WERE TO ASK HIM WHAT HE HAS OR WHAT HE HAS ACCOMPLISHED HE WOULD TELL YOU VERY LITTLE. BUT EVEN WITH THIS BEING THE CASE, WHEN TIMES WERE BAD AND HE HAD NO MONEY, HE DID NOT COME AND ASK TO BORROW MONEY HE KNEW HE COULD NOT REPAY, HE DID NOT TAKE IT FROM US, INSTEAD HE WOULD COME AND MOW YOUR LAWN, OR CLEAN YOUR GARAGE, OR WHATEVER ELSE YOU NEEDED. EVEN WHEN YOU WOULD TELL HIM "SCOTTY, ITS OK YOU DON'T NEED TO DO THAT", HE WOULD INSIST. HE NEVER WANTED YOU TO FEEL AS THOUGH YOU WERE BEING TAKEN ADVANTAGE OF ANYTHING YOU DID DO FOR HIM, FEED HIM, GIVE HIM A RIDE, BORROW HIM YOUR PHONE, NEVER WENT UNAPPRECIATED, HE ALWAYS SAID THANK YOU, GAVE A KISS AND TOLD YOU HE LOVED YOU BEFORE LEAVING. SCOTT HAS HAD SEVERAL THINGS TO OVERCOME IN HIS LIFE. WHEN HE WAS THREE HE WAS INVOLVED IN A CAR WRECK WITH HIS MOTHER. SHE SUBSEQUENTLY DIED AT THE SCENE AFTER BLEEDING TO DEATH RIGHT IN FRONT OF HIM. SCOTT WAS THEN LEFT IN THE CARE OF HIS FATHER WHO BECAME TERRIBLY DEPRESSED AND BECAME A BIKER, AN ALCOHOLIC, AND A DRUG ADDICT. THOUGH THIS WAS THE CASE SCOTT WOULD NOT LEAVE HIS FATHER HE ALWAYS FELT HE NEEDED TO HELP TAKE CARE OF HIM, EVEN WHEN HE WAS LITTLE. I WISH AT THIS TIME HE WOULD HAVE BEEN MORE SELF CENTERED, MAYBE THEN HE WOULD HAVE DETERMINED TO TAKE CARE OF HIMSELF FIRST AND NOT WORRY ABOUT OTHERS WHOM HE COULD NOT HELP (EVEN THOUGH HE WANTED TO OR THOUGHT HE COULD) AND JUST MAYBE HIS LIFE WOULD BE ELSEWHERE TODAY. AS IF THIS WEREN'T ENOUGH, HE WAS OCCASIONALLY LEFT IN THE CARE OF A FAMILY MEMBER WHO SEXUALLY ABUSED HIM. SCOTT CONTINUED TO LIVE WITH HIS FATHER UNTIL HE BECAME AN ADULT AND WAS MARRIED. I AM CERTAIN THAT THE REASONS MY BROTHER HAS COME TO BE SO DEPENDANT ON DRUGS IS TO DEAL WITH THE MANY SITUATIONS HE WAS UNABLE TO OVERCOME AS A CHILD, THIS WAS WHAT HE SAW DAY IN AND DAY OUT AS A METHOD OF DEALING WITH PAIN, THEREFORE I BELIEVE THE ADDICTION CAME EASY TO HIM. SCOTTY DID WELL FOR A SHORT TIME WHILE MARRIED BUT AFTER PROBLEMS WITH HIS MARRIAGE, THEY DIVORCED AND HE RETURNED TO THE DRUG USE. THROUGH ALL OF THIS HE HAS ALWAYS REMAINED SWEET, LOYAL AND LOVING. I LOOK AT HIM AND THINK HE HAS EVERY EXCUSE TO BE A HORRIBLE PERSON, BUT SCOTT IS NOT. I AM DISAPPOINTED THAT HE IS UNABLE TO GET THE TREATMENT THAT HE NEEDS HOWEVER, I REMAIN HOPEFUL THAT HE WILL BE ABLE TO SOON. SCOTT HAS THREE CHILDREN WHO MISS HIM MORE THAN I DO. HE HAS

BEEN A VERY LOVING FATHER SCOTTS MIDDLE CHILD, A SON THAT IS 7, IS HAVING AN ESPECIALLY HARD TIME DEALING WITH THE SEPARATION FROM HIS DAD. I AM SADDENED TO SEE THE EFFECT THIS IS HAVING ON THESE KIDS. I CANNOT HELP BUT FEEL AS THOUGH THIS SENTENCE IS NOT ONLY SCOTTS TO SERVE BUT ALSO MANY, MANY OTHERS AND I OFTEN WONDER HOW APPROPRIATE IT REALLY IS. I HAD COMMENTED TO THE ATTORNEY (AFTER HIS SENTENCING) THAT THIS SENTENCE WAS SO INAPPROPRIATE FOR SOMEONE WHO CLEARLY UNDERSTANDS HIS WRONGDOING AND WHO HAS DETERMINED TO GET ON THE RIGHT TRACK AND REMAIN THERE, I FOUND IT HARD TO BELIEVE THAT OUR REQUESTS TO HAVE HIM PLACED ON HOUSE ARREST AND/OR FOR HIM TO BE PLACED INTO A LOCK DOWN TREATMENT CENTER WERE REFUSED. I WONDERED (WITH THE OTHER OPTIONS AVAILABLE TO HIM) IF THE SYSTEM IS SET UP TO HELP THE INDIVIDUAL ANYMORE OR JUST SIMPLY TO PUNISH THEM. I BELIEVE THERE ARE INDIVIDUALS SERVING TIME WITH MY BROTHER WHO ARE NOT GOING TO EVER CHANGE BUT THIS IS NOT ALWAYS THE CASE. MANY PEOPLE MAKE HUGE MISTAKES BUT MANY OF THESE PEOPLE LEARN FROM THOSE MISTAKES AND GO ON TO BECOME BETTER THAN THEY WERE BEFORE, AND I TRULY BELIEVE THAT SCOTT IS ONE OF THESE PEOPLE. AN EASY EXAMPLE OF THE KIND OF PERSON MY BROTHER IS BRINGS ME TO ONE TIME IN HIS LIFE THAT HAS ALWAYS STOOD OUT TO ME THE VERY MOST., WHEN HE WAS 13-14 YEARS OLD HE HAD GOTTEN A TEN-SPEED BICYCLE FOR CHRISTMAS OR HIS BIRTHDAY OR SOMETHING ANYWAY, I WENT TO VISIT SCOTT AND MY FATHER ONE AFTERNOON AND I DID NOT SEE THE BIKE. FEARING IT HAD BEEN STOLEN (AND KNOWING THIS WAS ABOUT THE ONLY THING HE HAD BESIDES A COUPLE PAIR OF JEANS A SHIRT OR TWO, OH AND A PAIR OF TENNIS SHOES), I ASKED HIM WHERE HIS BIKE WAS, HE SAID TO ME, VERY MATTER- OF-FACT "I GAVE IT AWAY", WHAT! I SAID..."I GAVE IT AWAY" HE REPEATED. WHEN I ASKED WHO HE HAD GIVEN THE BIKE TO, HE TOLD ME THAT HE HAD BEEN DOWNTOWN (MIDVALE) AND HE SAW A HOMELESS MAN PUSHING A BROKEN DOWN, BEAT UP BIKE WITH A FLAT TIRE DOWN THE STREET, AND HE LOOKED AT HIM AND SAID "HERE YOU NEED THIS MORE THAN I DO, I'LL TRADE YA" OF COURSE THE HOMELESS MAN TOOK HIM UP ON THE OFFER AND I DON'T THINK MY BROTHER HAS THOUGHT TWICE OR FELT BAD ABOUT THAT FOR EVEN ONE MINUTE SINCE. THIS IS INDICATIVE OF HIS BEHAVIOR AND ALWAYS HAS BEEN, HE HAS DONE THINGS SIMILAR TO THIS THAT HAVE AMAZED US ALL, THIS IS THE PERSON THAT I KNOW AND LOVE, THE PERSON WHO HAS MADE WRONG DECISIONS BUT A PERSON WHO HAS SO MUCH POTENTIAL AND WHO HAS ALWAYS DONE MORE GOOD THAN BAD. I ASK YOU TO PLEASE CONSIDER ALL OF THIS WHEN YOU SET OUT TO DETERMINE HIS PAROLE DATE AND I URGE YOU TO GIVE HIM A SECOND CHANCE, I KNOW HE WILL MAKE THE MOST OF IT.

VERY SINCERELY,

LISA NEILSON

5-23-01

To whom it may concern,

I am writing on behalf of my ex-husband Scotty Wright. I don't know if this letter will have any effect on the decision that will be made regarding time that will be served by Scotty, but I'm hoping that what I have to say will be taken into consideration.

I realize that what Scotty was doing was very wrong, and I do believe he should be punished, but I think the verdict that was handed down was very harsh. Sometimes his ways are not the right ways but he really is a good person, and a good father. I have 3 children with him, their ages are 11, 7, & 4 ~~years~~ years old. They love and adore their father, as I know he does them. he would do anything for them. My kids are well-behaved, very well taken care of, and they have never been exposed to drugs, or that kind of atmosphere. My son, Tanner, who

is the 7 year old, has now seen a child psychologist for depression, and seperation anxiety because of the absence of his father, he is very attached to him, Scotty is his world. The thought of Scotty not being in my sons life, or all of my kids for that matter, is devastating to all of us. Yes I do think that he should pay his dues, but not for the amount of time that was given to him.

Please take this letter into consideration.

Thank you,
Carli Wright

To whom it may concern:

Scott Wright has been a friend and an employee of ours for approximatly 15 years. He was an asset to our company and a loyal friend at all times. Scotty would come to our home shortly after I had a baby c-section and offer his help with anything. He would help with the yard and my other children without ever being asked.

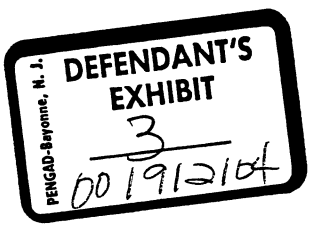
Scott Wright has had his share of lifes hard knocks, but we honestly believe that with the right guidence he could and would be a great asset to the world, as well as our company. He has a job waiting for him and will always have us as friends.

Over the years, in the construction business, we have seen many people fall due to one thing or the other, but never have we had to worry about Scott stealing from us or anything like that, unlike other employees and friends in the past.

In closing we pray that you will be lienent on Scott as his life has not been what a child deserves to have, and unfortunatly with that type of raising some people tend to stray, however we truly believe that Scott Wright has a chance given the right choices to make.

Any questions will be welcome please call Mark or Kelly Morey, Morey's Custom Siding, Inc at (801) 568-3955.

Thank you for your time!



Sincerely,

Mark & Kelly Morey

Mark and Kelly Morey

To Whom this may concerne:

My name is Craig Wright and I
m writing this letter on behalf of
my nephew his name is Scotty Wright he
s currently serving time on a I believe
5 & 1 first degree felony charge. for meth.
all though I firmly believe in having
nsequences for ones actions and
behaviors I feel a mistake has been
ade in Scotties sentencing. yes he
eserves to do some time. But he also
eserves a 2nd chance.

Scotty is not a hardend or violent
rson as anyone who knows him well
ee. I wish you could see him with his
kids he is loving and attentive & I
now he misses them terribly. I am
lose to Scotty and love him he
a thoughtful & kind man. But
does have a very serious and deadly
diction to meth. comming from
rsonal experiance I can tell you
coholism & addiction can be treated
d he can make it back into the
ain stream of life. I know that
long term drug program will
enefit him alot more the 4 or 5
ars in prison. he does have a lot
f support within his family to help
m recover & overcome his problems

DEFENDANT'S EXHIBIT

or a member of A.A. for over 9 years
I can be of help to Scotty if he chooses
to get his life back & stay sober & drug free
I do daily meetings and will be more than
happy to do whatever it takes to
help him. Bottom line it is his decision
to change his direction in life if
he do chooses he has alot of support
to do so if he was given this second
chance. I hope & pray that
you will concider all of his attributes
and give him a 2nd chance.

thank you sincerly

Craig Wright

June 1 – 2021

To whom it may concern,

My name is Lorie Clayton and I am (Scotty) Scott Weight's aunt, his dad's sister.

I would like to take this chance to express how dearley I love Scotty, and feel so sad about where his life is today. I know he made extremeley bad choices (yet is not a bad person) but good people can certainley make bad choices and mistakes as well as bad people. Until now Scotty's past has been fairley quiet, especially considering he was raised by an unconventional, single father, after his mother was killed in a car accident when he was only 3 years old.

My parents took him to raise for a few years, and then the boy wanted to live with his father, as he felt his dad needed him, so he did. Although life was tough for he & his dad, Scotty grew into a fine, loving adult, and took a wife and stepdaughter & following had 2 sons together.

Even though the marriage failed he continued to love & father his children and remained friends with his Ex-wife, I believe

they could get back together & be a whole family again, were Scotty given the chance.

He never had the security of a 2 parent family, and his only memory of his mother, is being in the car with her & was thrown out and unharmed, but she was killed instantly. He never had the gift of his loving, nurturing mother in his life.

My parents, who continued to raise his sister in their home, helped Scott SR. & Scotty the best they could, and as his beautiful, loving sister, Lisa grew, she tried to fill her mom's shoes and helped the best she could, and still does, but has her own family to raise & care for.

Scotty's big mistake was getting involved with the wrong woman, on rebound from his divorce. She soon after lost custody of her own children, and lead Scotty down the path to drugs. From that point on his mind was not clear, and he was fooled by her and set up to take the fall to save her

In Closing, again I feel so strongley for Scotty, and I can testify to the fact that he is a good, Kind, loving person, that made very bad choice's, and yes he needs to pay his debt/dues to society, but feel he would benefit, and his children would benefit by having their father in their life as well as Scotty's other family, if he were to get a 2nd chance to do it right, with a drug free life per rehabilation, fines, and community service, virses the use of tax payer's dollars to keep him locked up. Please consider, to allow him to rebuild his life, his pride & his soul.

Thank you for your time to consider Scotty's fate in its full sence.

Sincerley,

Lorie Clayton

To whom it may concern

We ar writing this letter in regards to Scotty Wright #31529

Scotty comes from a very traumatic childhood when he was four yrs old he and his mother were involved in an Auto accident which ook her life, his father could not make a ecovery from Alcholism as a result Scotty was motionally and physicaly abused

In spite of his many problems growing p Scotty remains gentle loving and Kind Scotty was in a bad relationship with a oung woman and he tried very hard to protect her children from abuse both physical and emotional.

Scotty came to live with us (his grand-parents) for over two years, he had he had had employment and worked very hard, unfortunatly he still had too many riends involved in drugs.

Scotty has trouble facing reality and also his previous problems which also include his not being able to talk about his Mothes ath. My husband and I firmly believe etting Scotty into a drug rehabilitation program this would be more benificial than much more time in prison.

cotty does relize he has made many mistakes d wrong decisions and he wants to nge his life.

ur family is here to support him whenever time comes for his release.

Sincerely,

NDANT'S
HIBIT

To whom it may concern,

I Tonya Hills, am writing to you to tell you about what a great person Scotty is.

Scotty has never been a trouble maker, he has had a very hard life, his mother was killed in a car accident when he was very young, he was in the car when the accident happened, and he was raised in a single parent home most of his life.

Scotty is my cousin, when myself and my other cousins were younger, (Scotty is a couple years older than the rest of us), but he was always willing to play games, take us to the store or go to the park, we all would go spend the weekend at our grandmothers house, but unfortunately over the years, as we have both grown-up and started our own families, we aren't as close.

I still love Scotty very much. I think he made some bad decisions, and got mixed up with the wrong people, at a difficult time in his life.

I think Scotty is ready for a second chance and second ~~beginning~~ begining for life. He has young children that need their father to be there to financially & emotionally support them.

I beleive Scotty would benefit more from a rehabilitation center instead of incarceration.

Thank you for taking the time and consideration to read my letter.

Sincerely

Tonya Hills

Tonya J Hills
June 1, 2001

TO THE BOARD OF PARDONS MEMBERS

MY NAME IS SHERI WRIGHT AND THIS LETTER IS IN REGARDS TO SCOTT A. WRIGHT, MY NEPHEW BY MARRIAGE. I HAVE KNOWN SCOTTY FOR 15 YEARS. I FEEL HE IS A TROUBLED YOUNG MAN AND NEEDS INTENSIVE DRUG REHABILITATION. SCOTTY IS A VERY INTELLIGENT AND COMPASSIONATE MAN WITH A LOT TO OFFER HIS FAMILY AND HIS COMMUNITY. SCOTTY HAS THREE CHILDREN WHO NEED A CLEAN AND SOBER FATHER AND I BELIEVE WITH SOME REHABILITATION SCOTT COULD BE A VERY GOOD DAD, HE LOVES HIS CHILDREN VERY MUCH. SCOTTY HAS A VERY STRONG AND SUPPORTIVE FAMILY, I KNOW THAT IF SCOTT CHOOSES TO BE CLEAN AND SOBER HE COULD BE A VERY PRODUCTIVE MEMBER OF SOCIETY. I UNDERSTAND THAT WHAT SCOTTY DID WAS VERY DANGEROUS AND WRONG, I JUST DON'T BELIEVE THAT PRISON IS THE ANSWER FOR HIM. SO MANY LIVES ARE RUINED BY DRUGS AND ALCOHOL AND I BELIEVE THAT GIVEN THE CHANCE SCOTT COULD CHANGE. I HAVE BEEN A MEMBER OF A 12 STEP PROGRAM FOR OVER 10 YEARS, I ATTEND 12 STEP MEETINGS ON A REGULAR BASIS AND WOULD BE VERY SUPPORTIVE OF SCOTT.

THANK YOU FOR TAKING THE TIME TO READ THIS LETTER AND I HOPE THAT YOU WILL GIVE SCOTT THE OPPORTUNITY TO CHANGE AND BETTER HIS LIFE.

SINCERELY,

SHERI WRIGHT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. SCOTT ALLEN WRIGHT, Defendant.	FINDINGS ON REMAND Case No. 001912104 Hon. MICHAEL K. BURTON Court Clerk: Marcy Thorne December 3, 2002

On or about May 15, 2002, the Utah Court of Appeals remanded the above-entitled matter back to the trial court for the purpose of entry of findings of fact on the following factual issues:

(1a) what efforts were undertaken by trial counsel in preparation for sentencing; (1b) what additional efforts could have been undertaken; (2) what were counsel's reasons for handling sentencing as counsel did; (3) what additional information relevant to sentencing could have been discovered by counsel prior to sentencing; and (4) was the omission of the additional information prejudicial to Wright at sentencing.

The Court held evidentiary hearings relevant to the Court of Appeals Order of Remand on July 12, 2002 and August 23, 2002. Closing arguments were heard on October 16, 2002, at which time the parties also presented the Court with their proposed findings of fact. Having considered the evidence offered by the parties

and having listened to and reviewed the argument of counsel, the Court makes the following findings of fact:

1a. What efforts were undertaken by trial counsel in preparation for sentencing?

The Court finds the following:

a. Counsel received the presentence report the night before the sentencing hearing and reviewed it.

b. Counsel met with Mr. Wright for approximately 15 minutes and read through the presentence report with him.

c. Counsel talked briefly with Mr. Wright's sister.

d. Counsel made notes on her copy of the presentence report for her argument.

1b. The Court finds that counsel could have undertaken the following additional efforts in preparation for sentencing:

a. Presume prison was the most likely outcome and prepare her presentation from that perspective;

b. Review the presentence report in more careful detail as was counsel's typical practice;

c. Compare the facts contained in the PSR with the facts counsel had documented in her file during the course of the defense, which was counsel's

typical practice;

d. Contact the defendant's previous employers, which was counsel's typical practice;

e. Interview the defendant's family for the specific purpose of preparing for sentencing, which was counsel's typical practice;

f. Meet with and interview the defendant's children and the mother of his children, which was counsel's typical practice;

g. Visit with the defendant in person and review the presentence report in careful detail, which is counsel's typical practice;

h. Collect and offer to the Court, counsel and AP&P, letters of recommendation from the defendant's family, friends and employers, which was counsel's typical practice;

i. Prepare an outline for argument in order to assure there was a cohesive framework in which to present the argument at sentencing;

j. Prepare and offer to the Court a sentencing memorandum concerning the defendant's history, the facts of the case, the defendant's role in the offense, and a comprehensive and detailed analysis

concerning why AP&P's recommendation was appropriate.

k. Ms. Kreek-Mendez stated that she did not believe she properly represented defendant at the sentencing hearing. "[T]his case haunts me," she said. "I could have done more. I wish there were a different result."

l. Ms. Kreek-Mendez further stated that she believed she should have offered testimony from defendant's family, friends and employers who would have characterized defendant as honest, hardworking and trustworthy. According to Ms. Kreek-Mendez, such information is important because it "humanize[s]" the defendant.

2. What were counsel's reasons for handling sentencing as she did?

The Court finds that counsel handled sentencing as she did for the following reasons:

a. AP&P offered a favorable recommendation;

b. The defendant had a minimal criminal history;

c. The defendant had good family support;

d. Defendant had been out of custody and done very well;

e. At the time, counsel was working on two high profile sex abuse cases. When counsel compared her sex abuse cases to the defendant's case, the defendant's case seemed relatively benign by comparison. As such, in counsel's mind, prison seemed unlikely.

f. Based on all of the forgoing factors, counsel presumed prison was unlikely. As such, counsel did not prepare for the sentencing hearing as earnestly as she normally would, given the severity of the offense.

g. Ms. Kreek-Mendez stated that her goal at the sentencing hearing was to demonstrate that defendant was a minor player in the drug manufacturing operation with a minimal criminal history. She opined that she did a "good job" and was "pretty effective." According to Ms. Kreek-Mendez, the case was pretty clear cut and she believes she properly conveyed to the sentencing judge that defendant had good qualities, including that he was a good father.

h. Ms. Kreek-Mendez acknowledged that her task was not easy. "A lab is the worst thing you can work

with. It is the most potential for incarceration." Moreover, because defendant's crime was a first degree felony, Ms. Kreek Mendez believed that "the chances should be the presumption of prison on the part of the defense attorney."

i. Ms. Kreek-Mendez stated that she was involved in other demanding cases which she judged to have a greater potential for prison time. For that reason, she believes she did not devote the time needed to properly prepare for defendant's sentencing. She also testified that she relied too heavily on the presentence report and added that the report "was written by, in my opinion, the most difficult report writer, someone who always recommends substantial incarceration; frequently recommends prison. He didn't."

j. Ms. Kreek-Mendez indicated that offering testimony from defendant's family at the hearing was considered, but that such a tactic was problematic. For example, Ms. Kreek-Mendez stated that having defendant's father testify would be difficult because, "I knew they would have to go

the bar where his dad was. I knew that one of my concerns about his dad was . . . that he was going to be sober on the day he testifies. . . . I remember lengthy conversations about what kind of witness dad would be in trying to help his son. He couldn't even be there."

3. What additional information relevant to sentencing could have been discovered by counsel prior to sentencing?

The Court finds that counsel could have discovered the following information:

a. Those letters of recommendation and the information contained as represented by exhibits 1-7; (Specifically, defendant offered seven letters from friends and family members which were submitted to the Board of Pardons. Ms Kreek-Mendez stated that the letters were representative of the kind of letters she ordinarily solicits for sentencing, but failed to do so in this case.)

b. The details surrounding the death of Mr. Wright's mother;

c. The fact that Mr. Wright had been sexually abused as a child and how that abuse affected him; and

d. The details about the abuse Mr. Wright suffered at the hands of his father.

4. Was the omission of the additional information prejudicial to Mr. Wright at sentencing?

The Court finds the following:

a. Judge Pat Brian was the sentencing judge. Judge Brian testified that Ms. Kreek-Mendez had represented defendants in his court on many occasions and that he believed she was an excellent attorney. He said that her performance at defendant's sentencing hearing was no exception. He said he did not find Ms. Kreek-Mendez's performance in any way deficient-least of all her alleged failure to present testimony from defendant's friends and family.

b. Judge Brian testified that he did not believe defendant was a minor player in the clandestine lab. He noted that manufacturing paraphernalia was found in what defendant admitted was his bedroom. Judge Brain also noted that defendant was familiar with the location of chemicals and waste materials in other parts of the home. Finally, the large quantity of methamphetamine and

precursor chemicals confiscated from defendant's home-and the fact that there were children present at the home during the police raid-also weighed heavily in favor of a harsh penalty.

c. These facts, said Judge Brian, led to the conclusion that defendant was "up to his armpits" in manufacturing methamphetamine.

d. Judge Brian stated that because defendant was intimately involved the operation, additional evidence concerning his character, work ethic and family support would not have made any difference in the sentence imposed. Judge Brian further stated that testimony concerning the death of defendant's mother or his alcoholic and abusive father would have made no difference because they were events that happened nearly 30 years ago and could not excuse the serious criminal activity in which defendant was involved. Similarly, the testimonials of family and friends that defendant was a good father, hard-working, reliable, trustworthy and caring would have been equally unavailing in view of the seriousness of the crime of manufacturing methamphetamine.

e. Based upon the forgoing, Judge Brian concluded that none of the evidence defendant claims should have been introduced at his sentencing hearing would have resulted in a lesser sentence. According to Judge Brian, "He may have been well-deserving of more than . . . five to life on that."

DATED this 3 day of December, 2002.

BY THE COURT

MICHAEL K. BURTON
DISTRICT COURT JUDGE

SALT LAKE COUNTY SALT LAKE CITY STATE OF UTAH DISTRICT COURT